

2007 Instructions for Form 8854
Initial and Annual Expatriation Information Statement

- Purpose:** This is the first circulated draft of the 2007 Instructions for Form 8854, Initial and Annual Expatriation Information Statement, for your review and comments. There are no major changes.
- TPCC Meeting:** None, but one may be arranged if requested.
- Prior Revision:** The 2006 Instructions for Form 8854 can be viewed by clicking on the following link: <http://www.irs.gov/pub/irs-pdf/i8854.pdf>
- Form:** The 2007 Form 8854 was circulated earlier at:
http://taxforms.web.irs.gov/Products/Drafts/2007-2/07f8854_d1.pdf
- Other Products:** Circulations of draft tax forms and instructions are posted at:
http://taxforms.web.irs.gov/draft_products.html
- Comments:** Please email, call, mail, or fax any comments by **September 24, 2007**.

Phil Parisi
Tax Forms & Publications
SE:W:CAR:MP:T:I:S
Email: www.philip.a.parisi@irs.gov
Phone: 202-622-3297
Fax: 202-622-5022

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2007



Department of the Treasury
Internal Revenue Service

Instructions for Form 8854

Initial and Annual Expatriation Information Statement

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

General Instructions

Purpose of Form

If you expatriated or terminated your long-term resident status after June 3, 2004, use Form 8854 to provide the information required by sections 6039G and 7701(n).

Expatriation or Termination of Residency

For purposes of immigration and nationality law, the date of your expatriation or termination of residency depends on when certain acts occurred. The specific acts that must have occurred depend on whether you are a former U.S. citizen or a former U.S. long-term resident (LTR). The specific acts are described below.

Former U.S. Citizens

If you were a U.S. citizen, you expatriated:

- On the date you renounced your U.S. citizenship outside the United States before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349 of the Immigration and Nationality Act, provided there is a determination of loss of citizenship by the Secretary of State, as reflected by your receipt of an approved Certificate of Loss of Nationality, or
- On the date you voluntarily performed an act of expatriation with the specific and contemporaneous intention of giving up your U.S. citizenship, provided there is a determination of loss by the Secretary of State, as reflected by your receipt of an approved Certificate of Loss of Nationality. An act of expatriation is any act defined as a potentially expatriating act either by paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act or by any other Act of Congress defining expatriating acts.

While your citizenship may have ended because a federal court revoked your naturalization under section 340 of the Immigration and Nationality Act, this type of loss of citizenship is not treated as an expatriating event for purposes of section 877 and this form, if after the revocation, you hold the status under the Immigration and Nationality Act of an alien lawfully admitted for permanent residence.

Former U.S. Long-Term Residents (LTRs)

If you were a U.S. long-term resident (LTR) (see *Definitions* below), you terminated your residency:

- On the date you voluntarily abandoned your lawful permanent resident (LPR) status by filing Department of Homeland Security Form I-407 with a U.S. consular or immigration officer, and the Department of Homeland Security determines that you have, in fact, abandoned your LPR status,
- On 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, or

- If you were a dual resident of the United States and a country with which the United States has an income tax treaty, on 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. See Treas. Reg. Section 301.7701(b)-7 for information on other filing requirements for such individuals.

Definitions

Former U.S. LTR. You are a former U.S. LTR if you were a lawful permanent resident of the United States for at least 8 of the 15 consecutive tax years ending with the date of your termination of residency.

LPR. You are an LPR 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."

Date of Tax Expatriation

If you expatriated or terminated your long-term resident status on or before June 3, 2004, see Pub. 519.

If you expatriated or terminated your long-term resident status after June 3, 2004, until you file Form 8854 and notify the Department of State or the Department of Homeland Security of your expatriating act or termination of residency, your expatriation or termination of residency for immigration purposes will 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. For purposes of U.S. tax rules, the date of your expatriation or termination of residency will be the later of the date you notify the relevant agency of your expatriating act or termination of residency, or the date this form is filed in accordance with these instructions. For purposes of determining the date on which this form is filed, apply the rules of section 7502. Generally, this is the postmark date.

Who Must File

You must file Form 8854 to:

- Establish that you have expatriated or terminated your LTR status 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.

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1. Your average annual net income tax liability for the 5 years ending before the date of your expatriation or termination of residency is more than the amount listed below.

- a. \$127,000 if you expatriated in 2005.
- b. \$131,000 if you expatriated in 2006.
- c. \$136,000 if you expatriated in 2007.

This amount is subject to cost-of-living adjustments. The IRS will announce the amounts applicable to future years in annual revenue procedures that will be published in the Internal Revenue Bulletin. The Internal Revenue Bulletins can be accessed at www.irs.gov/irb.

2. Your net worth is \$2 million or more on the date of your expatriation or termination of residency.

3. You fail to certify on Form 8854 that you have complied with all of your U.S. federal tax obligations for the 5 years preceding the date of your expatriation or termination of residency.

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 in accordance with 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.

Exceptions to section 877. Provided you have certified that you have met your tax obligations for the 5 tax years prior to your expatriation or termination of residency, you will not be subject to tax under section 877(b) if either of the following exceptions applies.

- You became at birth a U.S. citizen and a citizen of another country, you continue to be a citizen of the other country, and you have no substantial contacts with the United States.
- You became at birth a U.S. citizen, neither of your parents was a U.S. citizen at the time of your birth, your loss of citizenship occurred before you attained age 18½, and you were not present in the United States for more than 30 days during any of the 10 calendar years preceding your loss of citizenship.

See the instructions for lines 9 and 10 on page 3.

Tax Consequences of Presence in the United States After Expatriation or Termination of Residency

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 either you, your spouse, or either of your parents were born, or
- For each year in the 10-year period ending on the date of expatriation or termination of residency, 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

Initial Information Statement

If you are filing this form because you ceased to be a U.S. citizen (expatriated) or terminated your U.S. residency during the tax year, there is no due date for filing this form. However, until you both file this form with the Internal Revenue Service and notify either the Department of State or the Department of Homeland Security of your expatriation or termination of residency, you will continue to be treated, for tax purposes, as if you were still a U.S. citizen or resident. The date of your tax expatriation (the date you are no longer subject to U.S. taxation on a worldwide basis) is the date on which you have satisfied both requirements.

Annual Information Statement

If you are a nonresident alien filing this form to comply with the annual information reporting requirements of section 6039G, this form should be attached to a timely filed Form 1040NR, U.S. Nonresident Alien Income Tax Return, and a copy should be sent to the address below. If you are not required to file Form 1040NR, submit this form to the address below by the due date for filing Form 1040NR.

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.

Where To File

Internal Revenue Service
11511 Roosevelt Boulevard
Drop Point S607-F8854
Philadelphia, PA 19154

Specific Instructions

Initial or Annual Information Statement

Check the *Initial Information Statement* box if you are filing this form as your initial expatriation information statement to establish that you have expatriated or terminated your LTR status for tax purposes. Check the *Annual Information Statement* box if you have already expatriated or terminated your LTR status, are subject to the tax rules of section 877(b), and are filing this form as your annual expatriation information statement.

Part I—General Information

This section is to be completed by all filers.

Line 1

Generally, this number is your U.S. social security number. An incorrect or missing identifying number may result in failure to expatriate or terminate residency and/or a penalty of \$10,000. If you were never issued a social security number, please attach a statement explaining the reason.

Line 2

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 3

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.

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Line 4

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

Line 5

Date of notification, termination, or claim. In order to expatriate for tax purposes (to no longer be subject to U.S. tax as a U.S. citizen or LTR), you must (a) give notice of an expatriating act or termination of residency (with the requisite intent to relinquish citizenship or terminate residency) to the Secretary of State or the Secretary of Homeland Security, and (b) provide a statement in accordance with the information reporting requirements of section 6039G. The date of your expatriation is the date on which the latter of these two events occurs.

You will be considered to have given notice of an expatriating act (with the requisite intent to relinquish citizenship) to the Secretary of State as of the date that you either:

- Renounced your U.S. citizenship outside the United States before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act, or
- Submitted to a U.S. Embassy or consulate a signed statement affirming your voluntary and intentional relinquishment of U.S. citizenship accompanied by documentation confirming the performance of an act defined as potentially expatriating by paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act provided that such notification is ultimately confirmed by the issuance of a Certificate of Loss of Nationality from the Department of State.

You will be considered to have given notice of a termination of residency (with the requisite intent to terminate residency) to the Secretary of Homeland Security as of the date that you complete Form I-407, Abandonment of Lawful Permanent Resident Status, before a diplomatic or consular officer of the United States or at a Port of Entry of the United States before a U.S. immigration official.

You should retain written evidence of your notification.

Box a. 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.

Box b. Check this box if you are a former LTR, and enter the date on which you gave notice of termination of your LPR status to the Department of Homeland Security.

Box c. 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 *Former U.S. Long-Term Residents (LTRs)* on page 1).

If you have not yet notified the Secretary of State or Secretary of Homeland Security in connection with your expatriating act or termination of residency, you must file an amended Form 8854 stating the date on which such notification occurs.

Part II—Initial Expatriation or Termination Information Statement

This section and Schedules A (Balance Sheet) and B (Income Statement) must be completed by all individuals who expatriate or terminate residency during the tax year.

Line 7

Use the balance sheet in Schedule A to arrive at your net worth.

Line 9

You have no substantial contacts with the United States if you (a) were never a resident of the United States (as defined in section 7701(b)), (b) never held a U.S. passport, and (c) were not present in the United States for more than 30 days during any of the 10 calendar years preceding your loss of U.S. citizenship.

Line 10

Check the “Yes” box if:

- You are a minor who became a U.S. citizen at birth,
- Neither of your parents was a U.S. citizen at the time of your birth,
- Your loss of citizenship occurred before you attained age 18½, and
- You were not present in the United States for more than 30 days in any of the 10 calendar years preceding your loss of U.S. citizenship.

Line 11

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 or terminated your residency, 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 877 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.

Part III—Annual Information Reporting Under Section 6039G

If section 877 applies to you, you must complete Part III and Schedules A (Balance Sheet) and B (Income Statement) for the 10 tax years beginning with the year that includes the date of your expatriation or termination of residency, whether or not you owe tax under section 877 for the tax year. This means that if you perform an expatriating act or terminate residency, you must complete both Parts II and III of this form for the year in which that event occurs.

Exceptions to Filing Part III

Section 877 does not apply to you if your net worth is less than \$2 million as of the date of your tax expatriation, your average annual net income tax liability for the 5 tax years prior to the date of your tax expatriation was not more than the amount listed under *Taxation under section 877* on page 2, and you certify that you have met your tax obligations for the 5 years prior to expatriation.

If you exceed these dollar thresholds and you certify that you have met your tax obligations, section 877 may still not apply to you if you meet one of the exceptions for dual citizens at birth with no substantial presence or for certain minors. See *Exceptions to Section 877* on page 2.

You do not need to complete Part III of this form if:

- Your average annual net income tax liability for the 5 tax years ending before the date of expatriation (see line 6 on the form) was not more than the amount listed under *Taxation under section 877* on page 2, your net worth on line 7 was less than \$2 million, and you checked the “Yes” box on line 11.
- You checked the “Yes” box on line 8, and the “No” box on line 9, and you checked the “Yes” box on line 11, or
- You checked the “Yes” box on lines 10 and 11.

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Line 12a

List all foreign countries of which you are a citizen.

Line 12b

Indicate how you became a U.S. citizen. For example, if you acquired citizenship at birth, write "At Birth." If you acquired citizenship through naturalization, write "Naturalized Citizen."

Line 12c

Provide the date on which you became a citizen of each country listed on line 12a.

Line 13

If you 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 and must file Form 1040 for the current tax year. If in a subsequent year within the 10-year period you are not physically present more than 30 days during the year, you will again be subject to section 877 and file Form 1040NR. If you were present more than 60 days during the year, skip line 14.

Line 14

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 14a and b. 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.

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. 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.

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 file 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). 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. LPR. 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 of each partnership (using the categories on the balance sheet on page 3 of Form 8854) attributable to your interest in the 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 of each trust (using the categories on the balance sheet on page 3 of Form 8854) attributable to your interest in the 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 of each trust (using the categories on the balance sheet on page 3 of Form 8854) attributable to your interest in the 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. You can find Notice 97-19 on page 40 of Internal Revenue Bulletin 1997-10 at www.irs.gov/pub/irs-irbs/irb97-10.pdf.

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.

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Line 20

Add 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), and must be completed without regard to whether you have income subject to tax under section 877 for the tax year.

Note. If you are subject to section 877 for all or a portion of the tax year, and you derive income subject to tax under section 877 for the taxable 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.

Specific Line Instructions

Lines 3 through 6 require reporting of income which, 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 must also 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 or termination of residency, 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 which were earned or accumulated before the date of your expatriation or termination of residency 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, 1997-1 C.B. 394. 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 termination of residency, or during the 5-year period prior to your expatriation or termination of residency, 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 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.

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.