Expatriation, Form 8854, Invalidation of IRS Notice, and Next Steps

*By Hale E. Sheppard**

I. Introduction

According to guidance issued by the Internal Revenue Service ("IRS") back in 2009, obligations imposed on certain taxpayers parting ways with the United States included filing Form 8854 (*Initial and Annual Expatriation Statement*). Failure to do so was problematic for taxpayers because it exposed them to the notorious "exit tax." Few people have seemed to notice, but significant changes likely are on the way. This article analyzes worldwide obligations of U.S. individuals, exit taxes, foundations for Form 8854 filing duties, a tax relief program designed for those with unfiled Forms 8854, legislative proposals for increased enforcement using Forms 8854, a recent case invalidating the IRS document that introduced Form 8854, and IRS actions in other contexts where the courts have shot down administrative guidance.

II. Overview of Worldwide Duties

U.S. persons, including citizens and residents, ordinarily must pay federal income tax on *all* income derived, regardless of where it originates.[1] In other words, U.S. individuals face a system of worldwide taxation, obligating them to declare to the IRS on Form 1040 (*U.S. Individual Income Tax Return*) all income, whether it was earned, obtained, received, or accrued in the United States or a foreign country. Moreover, U.S. individuals with foreign assets, income, or activities generally must file various international information returns with the IRS.[2] Lastly, certain U.S. individuals who renounce their status must notify the IRS of their departure by filing Form 8854 and pay the exit tax, if required.[3]

III. Expatriation Taxes

Congress enacted the expatriation tax rules in 1966 to discourage U.S. citizens from moving abroad and surrendering their citizenship to avoid paying U.S.

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taxes.[4] Congress later expanded Code Sec. 877 to also cover long-term residents ("LTRs").[5] Finally, in 2008, Congress made its final changes thus far by replacing Code Sec. 877 with a new provision, Code Sec. 877A.[6] The IRS never issued regulations concerning Code Sec. 877A; it has only provided guidance in Notice 2009-85.[7] Some key aspects are explored below.

A. General Concepts

Code Sec. 877A generally imposes a mark-to-market tax regime on certain taxpayers, including U.S. citizens and LTRs, who decide to abandon the United States. They essentially must pretend to sell all their property at fair market value the day before their "expatriation date" and pay the corresponding U.S. income taxes on any gains.[8]

Expatriation by a U.S. citizen occurs when he renounces his U.S. nationality at a diplomatic or consular office, he furnishes to the Department of State a signed statement of voluntary relinquishment, the Department of State issues him a certificate of loss of U.S. nationality, or a U.S. court cancels his certificate of naturalization.[9] The "expatriation date" is the earliest day on which any of these four events takes place.[10]

The standards are different for LTRs. The "expatriation date" in their case is the day on which they cease to be lawful permanent residents for tax purposes.[11] Loss of LTR status occurs when (i) a Green Card is revoked or rescinded, (ii) a Green Card is abandoned, and then an administrative or judicial ruling confirms such abandonment, or (iii) an individual takes the position with the IRS that he is a resident of a foreign country under the tie-breaker rules of a treaty by filing Form 1040-NR (*U.S. Nonresident Alien Income Tax Return*), Form 8833 (*Treaty-Based Return Position Disclosure*), and Form 8854, if necessary.[12] The third way of losing status only applies to so-called "dual resident taxpayers."

The term "expatriate" means either a U.S. citizen who relinquishes his citizenship or an LTR who ceases to be a lawful permanent resident.[13] The exit tax applies only to "covered expatriates."[14] Thus, in order for the exit tax to apply, the taxpayer must be not only an expatriate, but also a covered expatriate.

For purposes of Code Sec. 877A, a covered expatriate means an individual who meets one of the following three tests. First, his average annual U.S. income tax liability for the past five years surpasses a particular amount ("Tax Liability Test"). Second, his net worth exceeds a certain threshold ("Net Worth Test"). Third, he cannot certify on Form 8854 that he maintained full U.S. tax compliance during the past five years ("Certification Test").[15] Stated another way, an individual failing *any one* of the preceding three tests normally is considered a covered expatriate. A few exceptions to classification as a covered expatriate exist, but these are beyond the scope of this article.[16]

B. Form 8854 Filing Duty

Individuals who relinquish their U.S. status normally must file a Form 8854 as soon as possible after expatriation, or by the due date for their first Form 1040-NR.[17] Where does this filing duty originate? This point is critical to the article. The Internal Revenue Code states that any individual to whom Code Sec. 877A applies for any taxable year must provide a statement for such year, which includes the basic information described in the statute, plus "such other information as the [IRS] may prescribe."[18]

The IRS never issued regulations, so taxpayers must look to Notice 2009-85. Interestingly, that administrative guidance acknowledges that the Internal Revenue Code says that the IRS "shall prescribe *such regulations* as may be necessary or appropriate to carry out the purposes of Code Sec. 877A," and the IRS "expects to *issue regulations* to incorporate the guidance" contained in Notice 2009-85, and "taxpayers may rely" on Notice 2009-85 until then.[19] For readers keeping count, those declarations by the IRS, still unachieved, happened approximately 15 years ago.

Notice 2009-85 indicates that a covered expatriate is an expatriate who fails the Tax Liability Test, Net Worth Test, *or* Certification Test. It expands on the third aspect, as follows:

> A taxpayer is a covered expatriate if he "fails to certify, under penalties of perjury, compliance with all U.S. federal tax obligations for the five taxable years preceding the taxable year that includes the expatriation date, including, but not limited to, obligations to file income tax, employment tax, gift tax, and information returns, if applicable, and obligations to pay all relevant tax liabilities, interest, and penalties . . . This certification *must be made on Form 8854* and must be filed by the due date of the taxpayer's federal income tax return for the taxable year that includes the day before the expatriation date.[20]

Notice 2009-85 goes on to warn that "individuals who fail to make such certification [on Form 8854] will be treated as covered expatriates . . . whether or not they also meet the Tax Liability Test or the Net Worth Test."[21]

IV. Program for Former U.S. Citizens

The IRS announced an initiative in late 2019 called the Relief Procedures for Certain Former Citizens ("Relief Procedures"). The IRS' website indicates that it remains in effect today.[22] The goal of the Relief Procedures is to allow certain taxpayers to avoid classification as covered expatriates and exposure to the exit tax.[23]

The IRS has recognized that "[s]ome U.S. citizens, born in the United States to foreign parents, or born outside the United States to U.S. citizen parents, may be unaware of their status as U.S. citizens or the consequences of such status." It later explained that, in order to comply with existing law and possibly avoid exit taxes, citizens who renounce or otherwise relinquish their U.S. citizenship must comply with U.S. tax obligations for the year of expatriation, as well as the previous five years. The IRS then pointed out that, in order to meet the Certification Test and thus avoid classification as a covered expatriate, taxpayers must file a Form 8854 with their Form 1040-NR for the year of expatriation and certify full U.S. compliance for the past five years.

The IRS designed the Relief Procedures to benefit a narrow group of taxpayers who (i) were U.S. citizens, (ii) have already expatriated, (iii) had either no U.S. income tax liability or minimal liability in the years before expatriation, (iv) were effectively "off the grid" in terms of U.S. tax compliance in that they never filed returns, and (v) would not have been subject to the exit tax under the Tax Liability Test or Net Worth Test, but who were liable solely because they failed the Certification Test.

The IRS clarified that the Relief Procedures are only available to taxpayers whose failure to file Forms 1040 and international information returns, as well as their failure to pay all relevant taxes, was due to "non-willful conduct."

The Relief Procedures constitute an alternative means for satisfying the Certification Test. If individuals submit the mandatory documents and meet the eligibility requirements, then they will not be covered as expatriates under Code Sec. 877A, will not be hit with the exit tax, will not be required to pay income taxes from prior years, and will not be penalized for unfiled international information returns.

The IRS offered several examples of how the Relief Procedures function, including the following one, which has been modified to enhance readability.[24]

> Jane was born in the United States. Her parents, citizens of a foreign country, were in the United States on a temporary work assignment with a multinational company when she was born. While on that temporary work assignment, Jane's parents purchased a house in the United States. Jane and her family returned to their country shortly after she was born. Although they left the United States, Jane's parents kept the house in the United States and rented it to tenants. Jane lives and works outside the United States. When her parents died, Jane inherited the rental house (with a fair market value of $300,000). Jane wants to renounce her U.S. citizenship and use the Relief Procedures to come into compliance. Jane has never filed a Form 1040 and never applied for or received a Social Security Number. Jane must report her worldwide income, including any income from the U.S. rental home. Jane renounces her citizenship on December 31, 2019. Then, Jane submits the tax returns required under the Relief Procedures for 2014 through 2019 (including a Form 8854). Assuming the aggregate total tax amount is less than $25,000 and Jane's net worth is below $2 million, Jane may use the Relief Procedures.

V. First Green Book

The current Presidential Administration has some ideas about how to treat expatriating taxpayers. It previously announced these in General Explanations of the Administration's Fiscal Year 2023 Revenue Proposals ("First Green Book").[25] That document divided suggestions into two parts, one for "high net-wealth taxpayers" and the other for "lower-income individuals."

A. Changes Aimed at the Wealthy

The First Green Book emphasized time constraints facing the IRS. It explained the general rule that the IRS has three years from the time a taxpayer files a tax return to identify it as problematic, conduct an audit, offer all required administrative procedures, and issue a final notice proposing adjustments.[26] The First Green Book recognized that there are various exceptions to the normal three-year rule. One such exception, found in Code Sec. 6501(c)(8), applies to situations where a taxpayer fails to file information returns about foreign income, entities, assets, activities, *etc.*[27] That provision provides that when a taxpayer does not file one of the specified information returns, the assessment period, both for asserting penalties and auditing the related tax returns, remains open for three years *after* the date on which the taxpayer

eventually files the information return.[28] In other words, if a taxpayer does not file particular international information returns, then the clock never starts to run against the IRS. The Presidential Administration underscored that "[e]xisting law *does not include Form 8854* as one of the information returns that would trigger an extended statute of limitations."[29]

Nobody yet knows what the IRS plans to do with respect to Form 8854, but taxpayers facing past or future expatriation issues, as well as any other type of potential problem resulting from Notice 2009-85, would be wise to hire experienced advisors soon to help them identify favorable positions, strategies, actions, and more.

The First Green Book continued by explaining that Form 8854 is critical to the IRS' ability to identify and audit taxpayers who expatriate. Indeed, if a taxpayer expatriates but omits Form 8854 with his final Form 1040, the IRS might be completely unaware that the taxpayer has left.[30] Why? The IRS receives data about expatriating taxpayers from the Department of State and other government agencies, but this comes *after* expatriation has occurred and does *not* include the Social Security Number or other identifying information. This makes it "more difficult and time-consuming for the IRS to match this information with taxpayer records."[31] The result is that the IRS often does not discover that a taxpayer has expatriated until *after* the general period for assessment of taxes, penalties, and interest has expired. Consequently, unless the IRS can prove that the taxpayer committed fraud, the IRS likely will be time-barred from imposing liabilities. The First Green Book warned that "[t]hese cases involve substantial amounts of foregone exit tax and related taxes, and high net worth taxpayers can exploit the tax system by simply failing to file Form 8854 with their tax return."[32]

The First Green Book proposed to fix matters by adding Form 8854 to the list of international information returns in Code Sec. 6501(c)(8). The effect of this would be that, if an individual were to leave the United States and fail to enclose a Form 8854 with his final Form 1040, the assessment period would not expire until three years after the taxpayer ultimately filed Form 8854. Thus, in situations where an individual *never* filed Form 8854, the assessment period would *never* close, and the IRS could take its sweet time starting an examination and imposing additional taxes, penalties, and interest. According to the First Green Book, this change would "create parity" with other international information returns and "reduce abuse and non-compliance with respect to high net wealth expatriates."[33]

B. Changes Aimed at Other Taxpayers

The Presidential Administration had a different stance when it came to "lower-income individuals" who have spent most of their lives abroad. The First Green Book made several observations. It first noted that some dual citizens (*i.e.*, citizens of both the United States and a foreign country) who have always lived abroad might not have previously filed Forms 1040, or even obtained a Social Security Number or other acceptable form of tax identification. The First Green Book also mentioned that some dual citizens might be unable to maintain a bank account in a foreign country where they are a citizen and resident because of their inability to confirm U.S. tax compliance. The First Green Book went on to state that, under current law, dual citizens will be considered covered expatriates, even though they have modest incomes and minimal foreign assets, if they cannot confirm on Form 8854 that they meet with Certification Test. Finally, the First Green Book recognized the "practical difficulties" of becoming U.S. compliant, such as finding and paying a U.S. tax advisor to prepare all required returns.[34]

The First Green Book suggested giving the IRS authority to "provide relief" for certain non-wealthy expatriating taxpayers, without supplying details about the extent of the mitigation envisioned, relevant eligibility thresholds, or other key factors. The First Green Book merely indicated that the benefits would only go to dual citizens with limited links to the United States.[35]

VI. Recent Case

Narrow international tax disputes sometimes create broad guidance. *Aroeste* is a good example.[36] Among other things, that case contains noteworthy rulings about whether taxpayers must follow legislative rules issued by the IRS by way of a Notice instead of a regulation.

A. Main Facts

Here is what readers need to know about *Aroeste*. Husband was born, raised, and educated in Mexico. He also worked in Mexico throughout his career, until he retired in 2012. He always filed annual Mexican tax returns as a Mexican resident, and he lived in Mexico for more than 50 years. He had a condominium in Florida, too, which he bought in 1980 and uses for vacations.

Husband obtained his Green Card around 1984, and he never formally relinquished it. Wife, by contrast, became a U.S. citizen in 2011 and maintained that status. In 2012 and 2013, Husband had a reportable interest in five accounts in Mexico, whose total balance surpassed $10,000. Husband filed a joint Form 1040 with Wife for those two years. However, he did not file Forms 8833 claiming that he should be treated as a Mexican resident under the US-Mexico Tax Treaty ("Treaty"), Forms 8854 announcing his expatriation, or FinCEN Forms 114 ("FBARs") disclosing the Mexican accounts.[37]

Husband became aware of possible U.S. non-compliance around 2014. Based on the advice of legal counsel, he applied to resolve matters with the IRS through the Offshore Voluntary Disclosure Program ("OVDP"). Husband later hired new legal counsel, who notified the IRS in 2016 that Husband wanted to "opt out" and avoid the standard penalties. The IRS initiated an audit, and Husband filed Forms 1040-NR for 2012 and 2013 as part of that process, claiming married-filing-separately status, and enclosing Forms 8833. He did not submit Forms 8854.

Four years later, in 2020, the IRS assessed FBAR penalties of $50,000 for each of 2012 and 2013, for a total of $100,000. Husband paid a portion of the penalties, and then filed suit in District Court seeking return of the money, along with discharge from all remaining amounts for both years. The Department of Justice ("DOJ") counterclaimed. It wanted to keep the amount that Husband already submitted, as well as force Husband to pay the outstanding balance.

B. Key Ruling

One major action in the case was the filing of Motions for Summary Judgment by both the DOJ and Husband. They asked the District Court to resolve matters, before trial, based solely on the facts and documents before it already.

Husband essentially argued that he was not a U.S. person thanks to the tie-breaker rules in the Treaty, such that he was not required to file FBARs for 2012 and 2013. The DOJ, in contrast, suggested that Husband was a U.S. person during the relevant years because he did not timely claim that he was a Mexican resident pursuant to the Treaty; that is, he did not file Forms 1040-NR enclosing Forms 8833 until years after the fact, after he opted out of the OVDP, and after the IRS audit had started. Husband, moreover, never filed Forms 8854.

The District Court divided its ruling into several sub-issues, only one of which is pertinent to this article. The DOJ suggested that, even if the IRS accepted the late Forms 1040-NR enclosing Forms 8833 submitted by Husband during the audit, he nonetheless would not be entitled to Treaty benefits because he failed to enclose Forms 8854 telling the IRS that he was "expatriating" from the United States, as required by Notice 2009-85. Husband argued that he was not required to file Form 8854 because the IRS broke the rules from the outset; it did not adhere to the Administrative Procedures Act ("APA") when it published Notice 2009-85.

The District Court sided with Husband. Citing several recent cases in which the IRS was admonished for improperly creating rules solely by issuing a Notice, the District Court held that "Notice 2009-85 *is not binding authority* as it fails to comply with the Administrative Procedures Act." It then added that the following:

> [B]ecause Notice 2009-85 has not been subject to a notice-and-comment procedure, it does not comply with the APA and thus is not binding. As such, [Husband] was *not* required to file Form 8854 with his amended returns.

C. Similar Court Decisions

Readers following recent cases might have thought that the District Court's decision in *Aroeste* was predictable to a certain degree. Why? Several other courts have invalidated various types of IRS guidance released in violation of the APA. For example, a District Court held that the IRS violated the APA when it issued Notice 2016-66 identifying certain micro-captive insurance arrangements as "transactions of interest."[38] Likewise, the Sixth Circuit Court of Appeals ruled that the IRS improperly ignored the APA when it published Notice 2007-83 calling trusts using cash life insurance policies listed transactions.[39] Another District Court determined that the IRS failed to comply with the APA when it issued temporary regulations for the dividends received deduction under Code Sec. 245A.[40] Moreover, the IRS released a Chief Counsel Advisory indicating that the

IRS cannot argue that taxpayers must file both Forms 8275 (*Disclosure Statement*) and Forms 8886 (*Reportable Transaction Disclosure Statements*) to avoid the economic substance penalty for undisclosed transactions because the sole source of that double duty, Notice 2010-62, contravenes the APA.[41] Most recently, the Tax Court rejected arguments by the IRS about supposed flaws in a deed of easement because the IRS infringed the APA when introducing the relevant regulations.[42]

VII. Second Green Book

The current Presidential Administration recently dusted off the ideas that it previously introduced in the First Green Book. Specifically, in March 2024, it released a publication called General Explanations of the Administration's Fiscal Year 2025 Revenue Proposals ("Second Green Book").[43] The verbiage varied somewhat, but the basic concepts in the First Green Book and Second Green Book are the same. The latter urges Congress to add Form 8854 to the list of international information returns in Code Sec. 6501(c)(8), such that non-filing gives the IRS a limitless assessment period.[44] With regards to "lower-income dual citizens with limited U.S. ties," the Second Green Book says that Congress should empower the IRS to "provide relief" from the normal exit tax rules. It does not offer specifics, though.[45]

VIII. Actions After Invalidation of Notice

In late 2016, the IRS announced in Notice 2017-10 that it intended to challenge certain conservation easement donations on the grounds that they supposedly constituted "tax-avoidance transactions" involving serious overvaluations.[46] The IRS used that hammer extensively for a half-decade until the Tax Court snatched it away in *Green Valley Investors*.[47]

The IRS claimed in that case that the partnerships were entitled to a charitable deduction of $0 because they allegedly failed to satisfy all technical requirements. The IRS also maintained that the partnerships warranted various sanctions, among them the so-called "reportable transaction penalty," because the tax liabilities were related to transactions described in Notice 2017-10. The partnerships disagreed and filed a Petition with the Tax Court.

The parties later lodged Motions for Partial Summary Judgment on assorted issues, including whether the IRS had the authority to impose the penalty in the first place. The Tax Court explained that the APA involves a three-step procedure, dictating that agencies, like the IRS, must (i) issue a general notice to the public about proposed rulemaking, (ii) allow interested persons to provide input, by submitting comments and/or participating in hearings, and (iii) feature in the final rule a "concise general statement" of its "basis and purpose." The Tax Court acknowledged the existence of certain exceptions, including that the APA applies to "legislative rules," but not to "interpretive rules." The Tax Court ultimately ruled that Notice 2017-10 was a "legislative rule," such that the IRS had to issue it in accordance with the APA.[48] The IRS did not do so. Dissuading the IRS from advancing the same position in the future, the Tax Court indicated that its ruling would have wide applicability. It stated, in particular, that it "intends to apply this decision setting aside Notice 2017-10 *to the benefit of all similarly situated taxpayers who come before us*."[49]

In view of the APA problems highlighted in *Green Valley Investors*, the IRS swiftly issued proposed regulations in late 2022 in an effort to *legally* make certain conservation easement donations listed transactions.[50] The IRS created the proposed regulations to hedge against future court losses in the Sixth Circuit Court of Appeals and Tax Court but warned that it continues "to defend the validity of Notice 2017-10 and other Notices identifying transactions as listed transactions."[51] The IRS also admonished that, from its perspective, the duties triggered by Notice 2017-10 remain in effect until the IRS can finalize the proposed regulations.[52] On a broader note, the IRS declared that it still adheres to its longstanding position that listed transactions "can be identified by Notice or other Subregulatory Guidance and that the APA's notice-and-comment procedure does not apply to such transactions."[53]

IX. Conclusion

The IRS says in Notice 2009-85 that expatriating taxpayers must file Forms 8854, and not doing so will cause failure of the Certification Test and exposure to the exit tax. The existing Relief Procedures and two legislative proposals, found in the First Green Book and Second Green Book, are rooted in Forms 8854. A District Court, *Aroeste*, recently ruled that Notice 2009-85 was invalid because the IRS ignored the APA in issuing it. Several other courts have arrived at similar conclusions, throwing out various types of administrative guidance,

including Notices, because the IRS did not create them in accordance with the APA. To rectify APA problems in other contexts, the IRS quickly released proposed regulations, incorporating earlier Notices. Nobody yet knows what the IRS plans to do with respect to Form 8854, but taxpayers facing past or future expatriation issues, as well as any other type of potential problem resulting from Notice 2009-85, would be wise to hire experienced advisors soon to help them identify favorable positions, strategies, actions, and more.

ENDNOTES

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1 Code Sec. 7701(a)(30)(A); Reg. §301.7701(b)-1; Code Sec. 61(a); Reg. §1.61-1(a).

2 For a detailed discussion of common international filing requirements, *see* Hale E. Sheppard, *Lessons from an International Tax Dispute: Three Interrelated Cases, in Three Different Proceedings, Generating Three Separate Liabilities*, 46, 5 INT'L TAX J. 43 (2020).

3 Code Sec. 877A.

4 HR Rep. No. 1450, 89th Cong., 2d Sess. 22–23 (1966); S. Rep. No. 1707, 89th Cong., 2d Sess. 28–29 (1966); *See also W.N. Dillon*, 56 TC 228, Dec. 30,768 (1971).

5 Health Insurance Portability and Accountability Act of 1996, §511; HR Rep. No. 496, pt. 1, 104th Cong., 2d Sess. 148 (1996); Joint Committee on Taxation, 104th Cong., 2d Sess., General Explanation of Tax Legislation Enacted in the 104th Congress, at 378–379 (1996); *See also* Code Sec. 6039G and Notice 97-19, 1997 CB 394 (Feb. 24, 1997).

6 P.L. 110-245, 122 Stat. 1624 HR 6081, 110th Cong., 2d Sess.; Heroes Earnings Assistance and Relief Tax Act of 2008, Section 301 (Jun. 17, 2008).

7 Notice 2009-85, IRB 2009-45, 598 (Oct. 15, 2009).

8 Code Sec. 877A generally applies to individuals who cease to be U.S. citizens or lawful permanent residents on or after June 17, 2008. *See* Notice 2009-85, IRB 2009-45, 598.

9 8 USC §1481(a)(1)-(5); Notice 2009-85, IRB 2009-45, 598, Section 2(A).

10 Code Sec. 877A(g)(2)(B).

11 Code Sec. 877A(g)(3)(B).

12 Reg. §301.7701(b)-1(b)(2); Reg. §301.7701(b)-1(b)(3); Code Sec. 7701(b)(6).

13 Code Sec. 877A(g)(2).

14 Code Sec. 877A(a)(1).

15 Code Sec. 877A(g)(1)(A); Notice 2009-85, IRB 2009-45, 598, Section 2(A); Code Secs. 877(a)(2)(A), (B), and (C).

16 Code Secs. 877A(g)(1)(B)(i)(I) and (II) and 877A(g)(1)(B)(ii)(I) and (II).

17 Code Sec. 6039G(a).

18 Code Sec. 6039G(b).

19 Notice 2009-85, IRB 2009-45, 598, Section 1—Overview.

20 Notice 2009-85, IRB 2009-45, 598, Section 2(A)—Individuals Covered—Definitions (emphasis added).

21 Notice 2009-85, IRB 2009-45, 598, Section 8(C)—Filing and Reporting Requirements—Form 8854.

22 *www.irs.gov/individuals/international-taxpayers/relief-procedures-for-certain-former-citizens*.

23 IRS Newswire Issue Number IR-2019-151 (Sep. 6, 2019).

24 *www.irs.gov/individuals/international-taxpayers/relief-procedures-for-certain-former-citizens*, FAQ #9.

25 Department of the Treasury. General Explanations of the Administration's Fiscal Year 2023 Revenue Proposals (Mar. 2022).

26 Code Sec. 6501(a); Department of the Treasury. General Explanations of the Administration's Fiscal Year 2023 Revenue Proposals (Mar. 2022), pgs. 87 and 88.

27 Code Sec. 6501(c)(8).

28 Code Sec. 6501(c)(8); Public Law 111-147 (March 18, 2010), Title V, Subtitle A, Parts I through V, Section 511(b); Department of the Treasury. General Explanations of the Administration's Fiscal Year 2023 Revenue Proposals (Mar. 2022), pg. 88.

29 Department of the Treasury. General Explanations of the Administration's Fiscal Year 2023 Revenue Proposals (Mar. 2022), pg. 88 (emphasis added).

30 Department of the Treasury. General Explanations of the Administration's Fiscal Year 2023 Revenue Proposals (Mar. 2022), pg. 88.

31 *Id*.

32 *Id*.

33 Department of the Treasury. General Explanations of the Administration's Fiscal Year 2023 Revenue Proposals (Mar. 2022), pg. 89.

34 Department of the Treasury. General Explanations of the Administration's Fiscal Year 2023 Revenue Proposals (Mar. 2022), pgs. 88 and 89.

35 Department of the Treasury. General Explanations of the Administration's Fiscal Year 2023 Revenue Proposals (Mar. 2022), pg. 89.

36 *A. Aroeste*, DC-CA, 2023-2 USTC ¶50,220, Case No. 22-cv-682-AJB-KSC, Order on Joint Discovery Motion, Feb. 13, 2023; Order on Cross-Motions for Summary Judgment, Nov. 20, 2023; Andrew Valverde, *Mexican Treaty Dual Resident Scores Big Win in FBAR Dispute*, 2023 TAX NOTES TODAY FEDERAL 224-9 (Nov. 22, 2023).

37 The Treaty is comprised of the (i) Convention between the United States of America and the Government of the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, with First, Second and Additional Protocol (1992); (ii) Treasury Department Technical Explanation of Convention and First, Second and Additional Protocol (1992); (iii) Second Additional Protocol (2003); (iv) Treasury Department Technical Explanation of the Second Additional Protocol (2003).

38 *CIC Services, LLC*, DC-TN, 2023-1 USTC ¶50,162, 129 AFTR 2d 2022-1119.

39 *Mann Construction, Inc.*, CA-6, 2022-1 USTC ¶50,122, 27 F4th 1138; Kristen A. Parillo, *Mann Construction Didn't Vacate Listing Notice Nationwide*, 2023 TAX NOTES TODAY FEDERAL 58-11 (Mar. 23, 2023).

40 *Liberty Global, Inc.*, DC-CO, 2022-1 USTC ¶50,134, 129 AFTR 2d 2022-1373.

41 Chief Counsel Advisory 202244010 (Nov. 4, 2022); *Microcaptive Transactions Are Adequately Disclosed on Form 8886*, 2022 TAX NOTES TODAY FEDERAL 214-21 (Oct. 3, 2022); Internal Revenue Service. Policy Statement on the Tax Regulatory Process. Mar. 8, 2019.

42 *Valley Park Ranch, LLC*, 162 TC No. 6, Dec. 62,442 (2024).

43 Department of the Treasury. General Explanations of the Administration's Fiscal Year 2025 Revenue Proposals (Mar. 11, 2024).

44 Department of the Treasury. General Explanations of the Administration's Fiscal Year 2025 Revenue Proposals (Mar. 11, 2024), pg. 215.

45 *Id*.

46 Notice 2017-10, IRB 2017-4, 544, Preamble and Section 1.

47 *Green Valley Investors, LLC*, 159 TC No. 5, Dec. 62,122 (2022).

48 *Green Valley Investors, LLC*, 159 TC No. 5, pg. 15, Dec. 62,122 (2022).

49 *Green Valley Investors, LLC*, 159 TC No. 5, Dec. 62,122, footnote 22 (2022) (emphasis added).

50 REG-106134-22, Syndicated Conservation Easement Transactions as Listed Transactions, Dec. 8, 2022; IRS Announcement 2022-28, IRB 2022-52, 659; Joseph DiSciullo, *Proposed Regs Require Reporting of Conservation Easement Deals*, 177 TAX NOTES FEDERAL 1565 (Dec. 12, 2022).

51 REG-106134-22, Dec. 8, 2022, pg. 14.

52 REG-106134-22, Dec. 8, 2022, Background, Section VII (Purpose of Proposed Regulations), pg. 20.

53 Announcement 2022-28, IRB 2022-52, 659.