

## Part III - Administrative, Procedural, and Miscellaneous

### Revision of Forms 8898 and 8840

#### Notice 2006-73

#### PURPOSE

This notice effects interim revisions to Forms 8898 and 8840. Taxpayers required to file these forms should disregard certain line items. The Treasury Department (Treasury) and Internal Revenue Service (IRS) plan to revise Forms 8898 and 8840 and the corresponding instructions in accordance with this notice. Until revised forms are issued, taxpayers may rely on this notice when completing these forms.

#### BACKGROUND

Section 937(a) requires that, except as provided in regulations, to be a bona fide resident of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the United States Virgin Islands, an individual must be present in the relevant U.S. possession for at least 183 days during the taxable year, must not have a tax home outside the possession during the taxable year, and must not have a closer connection to the United States or a foreign country than to the possession. The principles of section 7701(b)(3)(B)(ii) and Treas. Reg. § 301.7701(b)-2(d) apply to determine whether

an individual has such a closer connection. See § 937(a)(2); Treas. Reg. § 1.937-1(e)(1)(i).

Section 937(c) generally requires individuals who take the position for U.S. income tax reporting purposes that they became, or ceased to be, a bona fide resident of one of the specified possessions to file notice of such position. On April 18, 2006, the IRS released Form 8898, Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possession, on which the notice required by § 937(c) is to be made. Taxpayers who changed their residence to or from a U.S. possession during any of the tax years 2001, 2002, 2003, 2004, or 2005 generally must file Form 8898 by October 16, 2006 for any such tax year. See Notice 2006-57, 2006-27 I.R.B. 13.

Section 7701(b) generally provides that an alien is treated as a resident of the United States for U.S. income tax purposes if the individual (1) has entered the United States as a lawful permanent resident and is such a resident at any time during the calendar year; (2) is present in the United States for a substantial period of time (the “substantial presence test”); or (3) makes an election to be treated as a resident of the United States. An exception to the substantial presence test under section 7701(b)(3)(B) provides that an alien may still be treated as a nonresident alien if the individual (1) is present in the United States for fewer than 183 days during the current year; (2) has a tax home in a foreign country during the year; and (3) has a closer connection to that country than to the United States. Treas. Reg. § 301.7701(b)-2(d) provides a facts-and-circumstances test to determine whether an individual has such a closer connection. This facts-and-circumstances test provides a non-exclusive list of

factors to be taken into consideration when making this determination. See Treas. Reg. § 301.7701(b)-2(d)(1)(i) through (x).

An alien individual who otherwise meets the substantial presence test must file a statement for each tax year for which the alien claims a closer connection to a foreign country to explain the basis of the individual's claim. See Treas. Reg. § 301.7701(b)-8(a)(1). For this purpose, the Commissioner has prescribed the use of Form 8840, Closer Connection Exception Statement for Aliens.

#### REVISION OF FORMS

Part III of Form 8898 elicits information relevant to determining whether an individual has closer connections to the United States or a foreign country than to the relevant possession for purposes of the closer connection test of § 937(a). Part IV of Form 8840 elicits substantially the same information for determining whether an individual has a closer connection to a foreign country for purposes of the closer connection test of § 7701(b). Much of the information elicited reflects the facts and circumstances specifically set forth in the regulations. See Treas. Reg. §§ 1.937-1(e)(1)(i); 301.7701(b)-2(d).

Since the release of Form 8898, Treasury and the IRS have received comments concerning the reporting burden with respect to some of the information that individuals are required to provide on the form. In light of these comments, Treasury and the IRS intend to revise Forms 8898 and 8840, and the corresponding instructions, to modify the information required on lines 17 and 29 of Form 8898 and lines 20 and 31 of Form 8840. Until such time, taxpayers required to file Form 8898 or Form 8840 should

disregard those line items.

Because the closer connection tests of §§ 937(a) and 7701(b) are facts-and-circumstances tests, all of the factors described in Forms 8898 and 8840 are material in the determination of whether an individual is considered, respectively, a bona fide resident of a U.S. possession or a resident of the United States. Therefore, filers are required to retain the information previously elicited on lines 17 and 29 of Form 8898 or on lines 20 and 31 of Form 8840 in their books and records along with any other relevant information so that the information may be readily available for inspection in the event of an examination. See Treas. Reg. § 1.6001-1.

#### DRAFTING INFORMATION

The principal author of this notice is J. David Varley of the Office of Associate Chief Counsel (International). For further information regarding this notice contact Mr. Varley at (202) 435-5262 (not a toll-free call).