

15 April 2015

Sara K. Phillips

[REDACTED]
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Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510-6200

Re: Submission of Comments to the Individual Income Tax and International Tax Working Groups

Dear Sirs:

I write in regard to your request for comments from interested parties concerning the federal tax code, as outlined in the Finance Committee's news release dated 11 March 2015. I am a New York-licensed attorney and an American citizen who has lived and/or worked abroad for the majority of my life. What's more, I am married to a Canadian citizen and am a 2010 law school graduate, currently repaying a sizeable amount of student debt which I incurred as a Juris Doctor candidate, and also from a subsequently pursued (and obtained) Master of Laws degree.

My comments below are intended for review by the Individual Income Tax and International Tax Working Groups, and are in regard to the challenges I have faced as an individual American citizen when filing personal income tax with foreign earned income, foreign bank accounts, etc. Please kindly find the comments below, which have been separated under headings for your ease of review.

I. Foreign Earned Income Exclusions

I preface this section with a personal anecdote, of sorts. Before marrying me, my husband (a Canadian citizen) never fathomed the tax hurdles I would face each year due to our living and earning income abroad. We lived and worked in Mongolia, where we were both employed by international law firms; yet, as a Canadian citizen abroad, so long as my husband did not remain in Canada for more than 183 days, he was not subject to federal or provincial taxation. I was shocked and honestly, envious, given that each year filing taxes and dealing with my foreign earned income and foreign bank accounts had (and has) been nothing but an anxiety-inducing undertaking. As an American, I felt frustrated and ashamed. Here was my husband from Canada – a developed, democratic country not dissimilar from our own – free from the burden of filing and owing tax by virtue of the fact that he did not live in Canada. It made perfect sense. The simple logic being that since my husband was not in Canada taking advantage of those benefits provided Canadian citizens, he no longer needed to contribute his portion of tax to help maintain those benefits. Granted, I imagine the decision of the Canadian government to not tax its citizens abroad was perhaps more complicated than I have here laid out; however, it does not diminish the

fact that the majority of countries of the world are like Canada, and do not pursue the taxation of their citizens who reside abroad.

In stark contrast to my husband's situation, here was I, an American citizen, being pursued at every turn by the government: disclose your income; pay tax (even if you have already paid it to another country); disclose your bank accounts; disclose your private information to your foreign banking institutions; and more. How little patriotism and freedom I felt in that moment of comparison to Canada and the rest of the world. Even more vexing was that although I was contributing financially to another government via an income tax, I was being forced to also contribute money to the United States government, even though I was not enjoying the full benefit and fruits of my tax contributions – double taxation is discussed further below.

Despite working in Mongolia for well over one year, I never qualified for the foreign earned income exclusion. Though my salary was quite low for a lawyer by Western standards and despite the fact that I had already paid Mongolian income tax, I was still required to file and pay taxes in the United States. A large reason why I did not meet the standards for income exclusion was my desire to return to the United States to visit and be with my family. I moved to Mongolia in March of 2013 and therefore would not have resided in the country for the full tax year; hence, the option to claim bona fide residence was out of the question. The alternative option, for tax purposes, was to remain outside of the United States for at least 330 days in a 12 month period, which would mean that I could not visit my family for the holidays or say, visit a relative in a time of crisis if need be, without risking my tax status. These restrictions do not encourage the nurturing of familial relationships for Americans residing abroad. They force us to sacrifice, and they elicit feelings of anger and shame for the burden placed upon us by our government.

II. Double Taxation

As referred to above, my income was doubly taxed by the United States government. Due to the manner in which my salary was apportioned, I was not eligible for a foreign tax credit. My decision to accept employment abroad and move to Mongolia did not initially include an analysis of the double taxation treaties to which the United States is a party. Equally unfortunate (for me) was that Mongolia and the United States do not have such a treaty. This means that despite having paid personal income tax in Mongolia, to the Mongolian government, the United States again taxed my income. As I attempt to become financially grounded, with a large student loan burden, this double taxation of my income seems unconscionable. What's more, it is again a restriction placed upon the American citizen who must consider whether to pursue professional opportunities in countries in which he or she may face double taxation of what could be a very meager income.

III. Foreign Account Tax Compliance Act

Last year, one of my Mongolian banking institutions requested my Social Security Number and other personal details, stating it intended to become compliant with the United States' *Foreign Account Tax Compliance Act*. As I am a United States citizen, the Mongolian bank

stated that I could either supply this information or face potential tax liabilities later. As an attorney, I am aware that laws may have unintended consequences. In this case, my government was demanding the disclosure of my confidential information to individuals in whom I could not wholly trust.

As a practicing international lawyer in Mongolia, I was well aware of the country's issues regarding confidentiality and corruption, and the difficulties foreigners face when attempting to file complaints against Mongolian business entities or citizens. These issues were of concern to me when being told I must disclose my Social Security Number to the bank. To initially open the bank account, I was required to furnish very little information. What's more, the banking institutions of Mongolia struggle with updating their systems and furnishing documents we take for granted in the United States. For example, bank statements are not issued. In order to keep track of one's finances, one must periodically attempt to gain online access to one's account and thereafter print what could amount to a statement. In essence, I was forced to decide whether to close the account or furnish my personal and confidential information, putting myself at potential risk for identity theft and other crimes. Despite the bank being my preferred institution at which to conduct banking, I felt forced to close the account because of the constraints placed upon me by the *Foreign Account Tax Compliance Act*.

IV. Report of Foreign Bank and Financial Accounts (FBAR)

Building from my comments regarding the *Foreign Account Tax Compliance Act* above, and considering the general effect of the FBAR, I am filled with a sense of distrust. This distrust stems between me, the American citizen and you, the American government, and makes me ponder the fact that merely because I am an American citizen residing and working abroad, I am subject to pursuit and a certain degree of discomfort caused by the government. What is truly baffling in relation to the FBAR, is the large fine that Americans may face should they fail to comply with the disclosure requirements therein. For example, were I simply to have filed my taxes without the help of computers or a tax specialist, I may very well have missed this requirement, and could then have been made nearly destitute by the hefty fine that could be levied against me. I am left with a simple question: why? How do requirements like this further the interests of American citizens, or even the American government?

V. Filing Status and Deductions

The status:

American citizen (me) marries Canadian citizen (husband). Canadian never resides in the United States nor does Canadian seek residency status because American and Canadian live in Asia.

The quandary:

American must file income tax returns each year, despite residing and working abroad. Does American file “married filing separately” and lose all hope of claiming any deductions, or does American file “married filing jointly” and allow Canadian husband’s salary to be unfathomably taxed by the United States government? What if American and Canadian file jointly, but Canadian claims to be tax exempt? What deductions will American then lose? Potential deductions for loan interest payments? By virtue of American’s marriage to Canadian, the American is now in a worse tax position had American and Canadian simply decided to never become married. Canadian, on the other hand, suffers no ill effects from his marriage to the American, except those potentially placed upon him by the United States government.

The challenge described above faces my husband and me each tax year as we consider our best options for filing. Given my husband’s status as a Canadian citizen living in Asia, I must highlight the fact that the Canadian government has absolutely no interest in my income (despite our being married), nor does Canada require me to file any documents to avoid taxation. Conversely, my husband must consider whether he should disclose his income to a foreign government that could potentially lay claim to his income and how much time he can spend visiting the United States each year. In order for me, his wife, to claim any tax deduction benefits, my husband must place himself in the extremely uncomfortable position of filling out formal tax documents for the United States – a country with which he has no financial, property, or business ties. I do not deem to purport to have a suggestion for how to fix such a quandary we find ourselves in; however, the fact that my marriage has placed a larger tax burden upon me than what was present prior to my entering marriage is greatly perplexing and seems contrary to what I presume to be the public interest.

VI. Conclusions

In closing, I would like to reiterate my comments above and put forth a few final considerations for your learned selves. First, a reiteration below.

- a. The current scheme for foreign earned income exclusions is inadequate. The restrictions are not in line with other similarly-situated countries nor the global community at large. The taxing of Americans who reside and work abroad is an extremely questionable practice, and such tax restrictions do not encourage the nurturing of familial relationships for Americans worldwide. Instead, we are forced to sacrifice our interpersonal relationships to comply with the heavy burden and restriction of travel placed upon us by the United States government.
- b. Foreign tax credit notwithstanding, the potential double taxation of Americans residing and working abroad is unconscionable, and denigrates Americans’ ability to thrive and compete in the global market.
- c. The disclosure requirements under the *Foreign Account Tax Compliance Act* should be reconsidered in light of the risk at which it places many Americans abroad.

- d. The FBAR penalties, and for that matter, the requirement itself, should be reconsidered for the burden it places upon Americans abroad.
- e. Filing status and deductions should be amended so as to accommodate Americans who are married to foreigners, and who live and work abroad.

Finally, the federal tax code places United States citizens abroad at a significant disadvantage to our counterparts from other countries throughout the world. As described above, an American may be forced to consider if he or she will accept a job offer based on whether or not there exists a double taxation treaty, or how the foreign tax credit may apply to his or her income. Even if a citizen does not consider these points as part of their decision-making, an American may still be seriously disadvantaged due to the deliberations that may need be made concerning said American's tax situation overseas. For example, an American may be less competitive in the worldwide job market due to the tax burdens placed upon him or her while abroad, and therefore may be more expensive for international employers in terms of salary and other considerations. Even United States-based companies may be reluctant to utilize Americans for operations abroad due to the higher tax burdens that Americans may face. Seemingly punitive tax laws on expatriates also decreases the ability of Americans abroad to travel home and spend their income stateside, and thus expatriates may be inclined to take their money elsewhere. The dampening economic effect is all-encompassing, and is detrimental to all American interests.

Thank you for your time and consideration.

With kind regards,

Sara K. Phillips