

Ex-Patriate Worksheet

Please review our list of Frequently Asked Questions starting on page 4. There is some excellent information in there about the foreign earned income exclusion, housing exclusion, partial years, presence test, residency test and state tax returns.

If your spouse is also claiming the foreign earned income exclusion, please complete this form for each taxpayers.

Your Foreign Address

Employer's Name

Employer's US Address (if applicable)

Employer's Foreign Address

Country of Citizenship

State of Residency in US (if applicable)

Principal Country of Employment

Currency of Wage, Earning Statements

Foreign Taxes Paid, If Any

Ex-Patriate Worksheet (cont.)

Dates Abroad _____ Start _____ End _____

Please explain any travel during your time abroad, including dates and countries visited (including the US):

Are you to claiming the housing exclusion or housing deduction? If so, please describe your housing expenses below and include any reimbursements you received:

Does your spouse and children reside in the US?	YES	NO	NA
Do you own any property in the US?	YES	NO	
Do you own any property in a foreign country?	YES	NO	
Do you have any foreign bank accounts over \$10,000 USD?	YES	NO	

Disclosure

I(We) verify that the information provided in this **Ex-Patriate Worksheet** is accurate and complete. I(We) understand it is my(our) responsibility to include any and all information concerning income, deductions and other information necessary for the preparation of my (our) personal income tax return.

Taxpayer Signature _____ Date_____

Printed Name _____

Spouse Signature _____ Date_____

Printed Name _____

Please call or email us anytime with your questions and concerns. Thank you in advance, and we look forward to working with you!

Tina Watson, CPA, MBA
719-338-3054 direct
tina@watsoncpagroup.com

Jason Watson, EA, MBA
719-641-0201 direct
jason@watsoncpagroup.com

You may also contact us through facebook.com/watsoncpagroup or follow us on [@watsoncpagroup](https://twitter.com/watsoncpagroup).

How do partial years work with the foreign earned income exclusion?

For 2012, you can exclude a maximum of \$95,100 for single taxpayers. However, you must pro-rate this amount for partial years. So, let's say you earned \$40,000 in 2012 and you started your foreign job on July 1. You would be eligible for 183 days worth of the \$95,100 exclusion, or \$47,680 ($183/365 \times \$95,100$ or \$260.55 per day).

But, if you earned \$40,000 in 2012, and started your job on September 1, you would be eligible for 121 days worth of the \$95,100 exclusion or \$31,526. So \$8,474 would not be excluded and would be taxable income on your US tax return.

	<u>Jul 1</u>	<u>Sep 1</u>
Income	\$40,000	\$40,000
Days Abroad	183	121
Exclusion Limit	\$47,680	\$31,526
Excluded Income	\$40,000	\$31,526
Taxable Income	\$0	\$8,474

Lastly, the money you earned in the United States for the first part of the partial year is not excluded- to the qualify for the exclusion, it must be earned while residing or being present in a foreign country.

How do I qualify for the foreign earned income exclusion?

There are several small hoops, pitfalls and gotchas that you need to be careful with, but the big requirements are-

1. Your tax home must be in a foreign country, and your abode can be anywhere except the United States. These terms are different, the definitions are discussed later.
2. You must have foreign earned income. More on the definition of earned income later (see What is considered foreign earned income?)
3. You must satisfy one of the following (a b or c)-
 - a. United States citizen who is a **bona fide resident** of a foreign country or countries for an uninterrupted period that includes an entire tax year. Or,
 - b. United States citizen or resident alien who is **physically present** in a foreign country or countries for at least 330 full days during any period of 12 consecutive months. Or,
 - c. United States resident alien who is a citizen or national of a country with which the United States has an income tax treaty in effect and who is a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire tax year.

You must satisfy **all** three parts above (1, 2 and 3). If you are married to another foreign income earner, you do not have to meet the same test of a b or c above. You could be a bona fide resident (a) while your spouse qualifies as physically present (b).

Some people are simply not eligible for the exclusion of foreign income. For example, US government employees paid by the US government cannot claim the exclusion. There are handful of other ineligible taxpayers based on their association with the US government, armed services and the like.

Definitions of tax home, abode, bona fide residence and physical presence are explained later.

What is a tax home or abode, and how do they relate to each other?

Your tax home is one of the following-

1. Your regular or principal place of business, employment or duty post or,
2. Your abode in a real and substantial sense if you do not have a regular or principal place of business (traveling sales, for example). In this example, your tax home may be the place you live (your abode). Abode is defined below.

Also, your tax home does not necessarily define the location of your residence or domicile for tax purposes. These can be different places, and this in itself does not preclude you from the foreign earned income exclusion or foreign housing exclusion / deduction.

If you maintain an abode in the United States, you will **instantly be ineligible** for having a tax home in a foreign country. An abode has been loosely defined as one's home, habitation, residence, domicile or place of dwelling.

However, if you maintain a dwelling (versus abode) in the United States whether or not that dwelling is used by your spouse and dependents, does not necessarily mean that your dwelling is your abode.

Here is a snippet from an IRS Memorandum AM2009-003 (insomnia relief)-

Therefore, in addressing the tax home requirement, the courts have focused on the requirement under IRC section 911(d)(3) that the taxpayer's abode not be in the United States. For this purpose, the tax court and appellate courts have used the following definition of 'abode' found in the Bujol decision:

'Abode' has been variously defined as one's home, habitation, residence, domicile, or place of dwelling. Black's Law Dictionary 7 (5th ed. 1979). While an exact definition of 'abode' depends upon the context in which the word is used, it clearly does not mean one's principal place of business. Thus, 'abode' has a domestic rather than vocational meaning, and stands in contrast to 'tax home' as defined for purposes of section 162(a)(2). Bujol, 53 T.C.M. at 763.

Using the above definition of abode, in most of the decisions, the courts have concluded, based upon the blocks of time spent in the United States and other factors, such as a U.S. bank account, U.S. driver's license, and U.S. voter's registration, that the taxpayers had strong familial, economic and personal ties in the United States and only transitory ties in the foreign country where the taxpayers worked, and thus, the taxpayers were held to have a U.S. abode. Accordingly, the taxpayers could not exclude their foreign earned income from gross income for U.S. tax purposes.

Still awake?

To recap, your abode can be anywhere except in the United States. Your tax home is not necessarily your abode unless you do not have a regular place of business (then your tax home equals your abode in terms of location). As the Tax Court mentions, abode is a domestic term while tax home is a vocational term, and both are independently important as they relate to the foreign earned income exclusion. Typically you live in your tax home, and this minor distinction is not relevant.

There is a recurring theme in the foreign earned income exclusion- the spirit of your actions and the subsequent intentions will be the swing vote on many issues. The IRS does a decent amount of follow-up and even examinations of taxpayers claiming the exclusion- don't try to pull a fast one, you will lose, and lose big.

There are other considerations concerning temporary versus indefinite foreign assignments, and they relate to your tax home location. Also the term foreign country includes any territory that is **not** under control of the United States. It also includes the country's airspace and territorial waters, but not international waters and the airspace above them. Lastly, there are some unique exceptions for American Samoa, Guam and the Commonwealth of the Northern Mariana Islands.

As an interesting side note, there was a flight attendant for United Airlines who tried to claim the foreign earned income exclusion on income she earned in international airspace. [Click here to read the Tax Court Summary 2012-12](#) (spoiler alert- she lost).

What is the bona fide residence test?

There are four requirements to satisfy the bona fide residence test as an ExPat-

1. You must be a US citizen, or a resident alien living in a country that has a tax treaty with the United States.
2. Your actions must be considered resident-worthy. In other words, the IRS will determine if you are establishing a residency in a foreign country through your intentions and actions, purpose of your trip, and the nature and length of your stay abroad.
3. You must live in the foreign country for a whole tax year (most taxpayers use the calendar year as their fiscal or tax year, so January 1 thru December 31).
4. You cannot have any future plans of returning to the United States.

The fourth requirement can prove to be the most challenging. For example, if your contract is for two years, you will not qualify as a bona fide resident since you have definite plans to return to the US. However, if you take a job in France that is indefinite in term, you will qualify for the bona fide residence test after one full year.

You may still qualify under the physical presence test if you cannot satisfy the requirements of the bona fide residence test (see [What is the physical presence test?](#))

Furthermore, do not confuse the bona fide residence test with the physical presence test- if you truly have become a resident in a foreign country, the physical presence test rules will not make you ineligible for the foreign earned income exclusion. For example, you and your family move to Ireland and later Guinness sends you to Samuel Adams for two months to learn proper beer brewing techniques of a clearly superior beer. You still maintain your Ireland residence and your bona fide resident status (you must have clear intention of returning from such trips).

The physical presence test is in contrast to the bona fide residence test since it is strictly based on days here and days there.

If you make any statements to foreign authorities that you are not a resident of that country, and those authorities either hold that you are not subject to their income tax laws or they have not made a final determination on your residency, you will not be considered a bona fide resident.

Lastly, there are some special agreements and treaties that categorically prevent you from becoming a bona fide resident, however you may still qualify under the physical presence test.

What is the physical presence test?

ExPats qualify for foreign earned income exclusion and deductions under the physical presence test if they are physically present in a foreign country or countries for 330 full days during any rolling period of 12 consecutive months.

The physical presence test does not depend on the kind of residence you established, your intentions about returning, or the nature and purpose of your stay abroad. You can also count days you spent abroad for any reason. You do not have to be in a foreign country only for employment reasons- you can simply be living it up in the French Riviera. But remember, the income must be from a foreign source, and it must be earned (see What is considered foreign earned income?).

A full day is a period of 24 consecutive hours starting at midnight. Also, the time spent on or over international waters does not count towards the 330 days.

So, how do partial years work? Good question. So Jameson hires you as a quality control consultant, and you report to Ireland on August 1 2012. You would be eligible for the foreign earned income exclusion 330 days later, or about July 1 2013. Your exclusion would be pro-rated based on the number of days of the tax year spent in a foreign country (see How do partial years work with the foreign earned income exclusion?).

How does the foreign housing exclusion or deduction work?

In addition to the foreign earned income exclusion, you also can claim an exclusion (for salaried) or a deduction (for self-employed) from your gross income for your housing expenses.

You must qualify for the foreign earned income exclusion, and only amounts paid for with employer-provided funds may be excluded. This does not mean that your employer must pay the housing expenses directly- it only means that the monies used must be traced back to the employer in some fashion.

Housing expenses include rent, fair rental value of housing provided in kind by your employer, repairs, utilities (other than telephone), insurance, parking, among other items.

Housing expenses **do not** include expenses that are lavish or extravagant, deductible interest and taxes, cost of buying property including principal payments, domestic labor (maid, gardeners, etc.), improvements that increase the value or prolong the life of property, purchased furniture or depreciation.

The base housing amount is 16% of the eligible amount of foreign earned income exclusion. For example, if you are able to exclude the maximum for 2012 or \$95,100, the base amount is \$15,216 or \$41.69 per day. This amount is the portion that cannot be excluded- think of it as the money you would typically have spent on housing in the United States.

Note: There are scenarios where claiming the foreign housing exclusion or deduction is **not** to your advantage because of the base housing amount. Generally speaking, if your total income is within 16% of the foreign earned income exclusion allowed, you should not take the foreign housing exclusion or deduction.

There is also a limit on housing expenses. The amount of qualified housing expenses eligible for the housing exclusion and housing deduction is generally limited to 30% of the maximum foreign earned income exclusion computed on a daily basis (for 2012, this would be 30% of \$95,100 or \$28,530, or \$78.16 per day). However, the limit will vary wildly depending upon the location of your foreign tax home.

In 2006, the IRS, Treasury Department along with the State Department began recognizing that certain locations carry a much higher cost of living, and therefore needed to be factored into expatriate and per diem calculations. There are over 400 countries and specific cities that are deemed high-cost areas.

For example, London is considered a high-cost city (no kidding) and carries a maximum exclusion of \$83,600 or \$229.04 per day for 2012. Wow! So, normally you would be limited to \$28,530 or \$78.16 per day, but if you live in London your daily housing exclusion or deduction increases to \$229.04. Nice!

Here is a comparison of a high-cost city and a garden-variety city, and how the foreign housing exclusion differs. You might want to freshen up your beverage- here we go!

<u>Ln</u>		<u>London</u>	<u>Other City</u>
1	Housing Limit	83,600	28,530
2	Qualified Housing Expense	45,000	45,000
3	Housing Expenses Allowed	45,000	28,530
4	Base Amount Not Allowed	15,216	15,216
5	Foreign Housing Exclusion	29,784	13,314
6	Foreign Income Exclusion	95,100	95,100
7	Total Exclusion	124,884	108,414

In each example, the taxpayer had \$45,000 in qualified housing expenses shown on line 2. This amount was allowed under the London column but was limited to \$28,530 under the 'other city' column which is shown on line 3.

The first 16% of the maximum foreign earned income exclusion is not allowed to be excluded. For 2012 this is 16% x \$95,100 or \$15,216 as shown on line 4. So the allowable foreign housing exclusion is reduced as shown on line 5. We're not done yet, there's more.

Your foreign earned income is now reduced by the amount shown on line 5. So with our ExPat living in London if she earns \$100,000 USD she can only exclude \$70,216 (\$100,000 less \$29,784). Yet if she earns \$150,000 USD then she can exclude the full allowable amount for 2012 or \$95,100. Make sense?

Other notables include Dubai at \$57,174, Paris at \$84,800 and Japan rounding out the list at \$128,000. You can see the entire list of countries in IRS Notice 2012-19 (was IRS Notice 2008-107, which has been superseded).

Another big takeaway here is that foreign housing exclusions and deductions are always broken down into a **value per day**, and the multiplied by the days living abroad.

If you are self-employed, the foreign housing deduction (as opposed to exclusion) applies to you, and the computations above remain applicable. However, as a self-employed taxpayer, you can carry over any part of your housing deduction that is limited (and not allowed) to the next year. If you cannot deduct it next year, you cannot carry to any other year.

Married couples can have some unique situations and may be allowed to exclude or deduct the expenses of two separate households.

What are the filing timelines for submitting my ExPat tax returns?

Taxpayers claiming the exclusion of foreign income are automatically given an extension until June 15 (60 days after the typical tax return deadline). However, we always suggest a traditional extension to October 15. Be aware, however, there are interest and penalties on late payments (**only if you owe taxes**) that may still be imposed by the IRS-

<u>Filing Date</u>	<u>Interest</u>	<u>Penalties</u>
April 15	No	No
June 15	Yes	No
October 15	Yes	Yes

Caution: Several states do not grant the automatic extension for foreign earned income exclusion taxpayers that the IRS does, nor do some states even honor or acknowledge the exclusion. On top of that, several taxpayers need to wait until mid-year to file their tax returns to qualify for the exclusion- so we typically will prepare tax returns ahead of time to see if you will owe taxes. If you do, we file an extension, you pay your taxes on time, and then we file your tax returns with the exclusion. This is ideal.

As an ExPat, do I need to file a State tax return?

Perhaps. This is an extremely sticky wicket. Generally speaking if you intend to return to the state that you resided in just prior to moving overseas, that state is going to claim you as their resident during the entire time you are abroad. Think of this way- to be a United States citizen for tax purposes, by definition you must be domiciled in a state (there are exceptions of course).

States are getting more and more picky (down-right nasty, frankly) about foreign earned income exclusions. If you maintain a state address, a state-issued drivers' license, financial accounts, property ownership and / or voter registration status, you will be deemed a resident of that state while living abroad. An underlying theme in the foreign earned income exclusion is the spirit of your intentions- the IRS will examine everything to determine your intent, and states will do the same.

Two extremes- Texas (among other states) does not have an income tax. California does not recognize a foreign earned income exclusion on the state level- in other words, all your foreign income will be taxed at the California level even if it is excluded at the Federal level. Yuck.

Several states fall in between. It might be to your advantage to become a resident of an income-tax free state such as Texas, Wyoming, South Dakota, Florida, etc. prior to your international assignment.

Lastly, just because you own property as a rental in a state does not necessarily mean you are a resident of that state. For example, you might have a rental home in California requiring a non-resident tax return and be a resident of Texas. You will only report the rental income or loss on your California tax return since you are a non-resident who only owns business property there, while declaring Texas your state of residency for state income tax purposes and living in London. Say that ten times fast.