Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B09-PLR-125564-02
Date:
September 24, 2002

Re:

Legend

Taxpayer =

Country X =
Date 1 =
Date 2 =
State X =

Dear :

This is in response to your authorized representative's letter of April 26, 2002, requesting a ruling on whether Taxpayer will be treated as a "nonresident not a citizen of the United States" for estate and gift tax purposes.

The facts and representations submitted are summarized as follows. Taxpayer's grandparents were born in Puerto Rico between 1888 and 1896 and were domiciled in and residents of Puerto Rico their entire lives. Taxpayer's father and mother were born in Puerto Rico in 1920 and 1926, respectively. They have been domiciled in Puerto Rico their entire lives and have resided in Puerto Rico at all times except as follows: (i) from 1942 through 1945, Taxpayer's father served in the United States Armed Forces; (ii) from 1946 through 1952, Taxpayer's father studied medicine in Country X; and (iii) from 1949 through 1952, Taxpayer's mother, following her marriage to Taxpayer's father, moved to Country X. Taxpayer was born in Country X on Date 1. On Date 2, Taxpayer's parents left Country X, and have resided in Puerto Rico ever since.

Since Date 2, Taxpayer has been domiciled and resided in Puerto Rico at all times except for a period of 10 months during which Taxpayer was a graduate student in State X. Taxpayer is a U.S. citizen and a resident of Puerto Rico.

Taxpayer proposes to transfer property with a value in excess of $11,000 to his children.

Section 2501(a)(1) of the Internal Revenue Code provides that a tax, computed as provided in § 2502, is imposed for each calendar year on the transfer of property by gift during such calendar year by any individual, resident or nonresident.

Section 2501(a)(2) provides that § 2501(a)(1) shall not apply to the transfer of intangible property by a nonresident not a citizen of the United States.

Section 2501(b) provides that a donor who is a citizen of the United States and a resident of a possession thereof, shall, for purposes of the gift tax, be considered a "citizen" of the United States within the meaning of that term unless the United States citizenship was acquired solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

Section 2501(c) provides that a donor who is a citizen of the United States and a resident of a possession thereof shall, for purposes of the gift tax, be considered a "nonresident not a citizen of the United States", but only if the donor acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

Section 2511(a) provides that the tax imposed by § 2501 shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible; but in the case of a nonresident not a citizen of the United States, the tax shall apply to a transfer only if the property is situated within the United States.

Treasury Regulation § 25.2501-1(d) provides that the term "nonresident not a citizen of the United States" includes a U.S. citizen domiciled in a possession of the United States who acquired his U.S. citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

Section 2208 provides that a decedent who was a citizen of the United States and a resident of a possession thereof at the time of his death shall, for purposes of the estate tax, be considered a "citizen" of the United States unless he acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

Section 2209 provides that a decedent who was a citizen of the United States and a resident of a possession thereof at the time of his death shall, for purposes of the estate tax, be considered a “nonresident not a citizen of the United States” but only if such person acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

Treasury Regulation § 20.2209-1 provides that the term “nonresident not a citizen of the United States” includes a U.S. citizen domiciled in a possession of the United States who acquired his U.S. citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

Under section 7 of the Foraker Act, 31 Stat. 77, 79 (1900), current version at 48 U.S.C. 733 (1988), all Spanish subjects who resided in Puerto Rico on April 11, 1899, and continued to reside there through April 12, 1900, and their children born subsequent thereto, who did not file a declaration of Spanish allegiance prior to April 11, 1900, were deemed to be citizens of Puerto Rico. Section 5 of the Jones Act (also known as the Second Organic Act of Puerto Rico), 39 Stat. 951, 953 (1917), conferred United States citizenship on all persons who became citizens of Puerto Rico under the Foraker Act.

Under the Nationality Act of 1940, 54 Stat. 1137, as amended, a person born outside the United States and its outlying possessions of parents both of whom are citizens of the United States, and one of whom has resided in the United States or one of its outlying possessions, is a citizen of the United States. The Nationality Act of 1940 defines the term United States, when used in a geographical sense, to include the continental United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands. Taxpayer was born on Date 1 and became a U.S. citizen under the Nationality Act. Therefore, Taxpayer does not derive U.S. citizenship solely from being a citizen of a U.S. possession, and Taxpayer is not considered a “nonresident not a citizen of the United States” for purposes of applying §§ 2209 and 2501(c).

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

A copy of this letter must be attached to Taxpayer's U.S. income tax return for the year in which Taxpayer obtained the ruling (whether or not Taxpayer is otherwise required to file a return).

The ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Taxpayer's authorized representative.

Sincerely,

Melissa C. Liquerman

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Melissa C. Liquerman
Branch Chief, Branch 9
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure
Copy for 6110 purposes