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Person To Contact:

Telephone Number:

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Date:
January 29, 2019

Legend

Taxpayer
Country A
Country B
Date
Year 1
Year 2
Year 3
Year 4
Year 5
Year 6
a
Possession

Dear :

This letter responds to your personal representative's letter of July 25, 2018, and subsequent correspondence, requesting a ruling concerning your status as a nonresident not a citizen of the United States for purposes of federal estate, gift, and generation skipping transfer ("GST") tax under sections 2209, 2501(c), 2652, and 2663 of the Internal Revenue Code, and § 26.2652-1(a)(2) of the Generation-Skipping Transfer Tax Regulations.

The facts and representations submitted are summarized as follows:

Taxpayer was born in Country A on Date in Year 2, a year between 1940 and 1952. At the time of his birth, neither of Taxpayer's parents were citizens, nationals, or residents of the United States nor any of its possessions or territories. And neither of Taxpayer's parents were born in the United States nor any of its possessions or territories.

Taxpayer's mother was a citizen of Country A and resided in Country A from her birth (before Year 2) until Year 3. Taxpayer's father was a citizen of Country B and resided in Country A from Year 1 to Year 3.

Taxpayer resided in Country A from Year 2 until Year 3. In Year 3, Taxpayer relocated to Possession, a possession of the United States under § 7701(d), with a student visa. After graduating from college in Year 4, Taxpayer began working in Possession with a work visa. Taxpayer has continuously resided in Possession since Year 3.

In Year 5, Taxpayer became a permanent resident of Possession, and in Year 6, at the age of a, Taxpayer became a citizen of the United States through naturalization proceedings in the U.S. District Court for the district of Possession.

LAW AND ANALYSIS

Taxpayer was not a citizen of the United States by reason of his birth

The Nationality Act of 1940 (the "1940 Act")[1] was in effect in Year 2, at the time of Taxpayer's birth. The law in effect at the time of birth governs whether a child obtains derivative citizenship through his parents as of his or her birth. See *Morales-Santana v. Lynch*, 804 F.3d 520, 524 (2nd Cir. 2015), *aff'd in part, rev'd in part sub nom. Sessions v. Morales-Santana*, 137 S.Ct. 1678 (2017).

Section 201 of the 1940 Act provides a list of persons who are to be considered citizens of the United States by reason of their birth.

Paragraphs (a) and (b) of section 201 of the 1940 Act address persons born in the United States. Paragraph (d) of section 101 of the 1940 Act defines the United States as the continental United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands of the United States. The facts provide that Taxpayer was not born in any of the aforementioned locations, therefore paragraphs (a) and (b) of section 201 of the 1940 Act do not apply to Taxpayer.

Paragraph (e) of section 201of the 1940 Act addresses persons born in an outlying possession of the United States. Paragraph (e) defines the outlying possessions of the United States as all territory, other than those specified in paragraph (d), over which the United States exercises rights of sovereignty, except the Canal Zone. The facts provide that Taxpayer was born in Country A. Country A was not an outlying possession of the United States. Therefore, paragraph (e) did not apply to Taxpayer. Paragraph (f) of section 201 of the 1940 Act addressed children of unknown parentage found in the United States, which does not apply to Taxpayer.

[1] Nationality Act of 1940, Pub. L. No. 876, 54 Stat. 1137 (October 14, 1940).

Paragraphs (c), (d), and (g) of section 201 of the 1940 Act address persons born outside the United States and its outlying possessions. Paragraph (c) applies to persons born outside the United States and its outlying possessions of parents both of whom were citizens of the United States. The facts provide that neither of Taxpayer's parents were citizens of the United States at the time of his birth, therefore paragraph (c) did not apply to Taxpayer. Paragraphs (d) and (g) of section 201 of the 1940 Act apply to persons born outside the United States and its outlying possessions to parents one of whom was a citizen of the United States. The facts provide that neither of Taxpayer's parents were citizens of the United States at the time of his birth, therefore paragraphs (d) or (g) did not apply to Taxpayer.

Further, sections 202 and 203 of the 1940 Act address persons born in Puerto Rico, the Canal Zone, or Panama in certain time periods and provide conditions under which such persons could be declared citizens of the United States.

In this case, Taxpayer was (1) not born in the United States or one of its possessions, (2) not born of parents at least one of whom was a citizen of the United States, and (3) not found in the United States with unknown parentage. Under the statute in effect when Taxpayer was born, the 1940 Act, Taxpayer would not have qualified as a citizen of the United States at birth. Accordingly, based on the facts presented and representations made, we conclude that Taxpayer did not acquire his United States citizenship on account of his birth.

Taxpayer became a citizen of the United States through naturalization based solely upon residency in Possession

The Immigration and Nationality Act of 1952 (the "1952 Act")[2] was in effect in Year 6, when Taxpayer became a United States citizen.

Sections 310 through 348 of the 1952 Act contain the rules with respect to naturalization. Naturalization is defined by paragraph 23 of section 101 of the 1952 Act as the conferring of nationality of a state upon a person after birth, by any means whatsoever. Paragraph (a) of section 316 of the 1952 Act provides the residency requirement for naturalization.

> No person, except as otherwise provided in this title, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing this petition for naturalization *has resided continuously*, after being lawfully admitted for permanent residence, *within the United States for at least five years* and during the five years immediately preceding the date of filing this petition has been physically present therein for periods totaling at

[2] Immigration and Nationality Act of 1952, Pub. L. No. 414, 66 Stat. 163 (June 27, 1952) (codified as amended at 8 U.S.C.A. §§ 1101-1557).

> least half of that time, and who has resided within the State in which the petitioner filed the petition for at least six months, (2) has resided continuously within the United States from the date of petition up to the time of admission of citizenship, and (3) during all periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. (Emphasis added)

Paragraph 38 of section 101 of the 1952 Act defines the term United States as the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands of the United States. Paragraph 36 of section 101 of the 1952 Act defines the term State as Alaska, Hawaii, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands of the United States.

Taxpayer became a citizen of the United States in Year 6 under the naturalization provision of the 1952 Act based on his continuous residency in Possession. Taxpayer did not become a citizen of the United States under the 1940 Act based on his birth. Accordingly, based on the facts presented and representations made, we conclude that Taxpayer acquired his United States citizenship solely by reason of residence within a possession of the United States.

Taxpayer is presently considered a "nonresident not a citizen of the United States" for federal estate, gift, and GST tax purposes

Section 2101(a) imposes a tax, except as provided in § 2107, on the transfer of the taxable estate (determined as provided in § 2106) of every decedent nonresident not a citizen 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.

Section 20.2209-1 of the Estate Tax Regulations 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 2501(a)(1) 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.

Section 25.2501-1(d) of the Gift Tax Regulations 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 26.2652-1(a)(1) provides, in part, that, except as otherwise provided in paragraph (a)(3) relating to certain qualified terminable interest property trusts, the individual with respect to whom property was most recently subject to federal estate or gift tax is the transferor of that property for purposes of chapter 13. An individual is treated as transferring any property with respect to which the individual is the transferor. Thus, an individual may be a transferor even though there is no transfer of property under local law at the time the federal estate or gift tax applies.

Section 26.2652-1(a)(2) provides that, for purposes of chapter 13, a transfer is subject to federal gift tax if a gift tax is imposed under § 2501(a) (without regard to exemptions, exclusions, deductions, and credits). A transfer is subject to federal estate tax if the value of the property is properly includible in the decedent's gross estate as determined under § 2031 or § 2103.

Section 2663 provides, in part, that the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of chapter 13, including regulations (consistent with the principles of chapters 11 and 12) providing for the application of chapter 13 in the case of transferors who are nonresidents not citizens of the United States.

Section 26.2663-2(b)(1) provides that a transfer by a non-resident not a citizen of the United States is a direct skip subject to chapter 13 only to the extent that the transfer is subject to the federal estate or gift tax within the meaning of § 26.2652-1(a)(2).

Section 26.2663-2(b)(2) provides that chapter 13 applies to a taxable distribution or a taxable termination to the extent that the initial transfer of property to the trust by a non-resident not a citizen of the United States transferor, whether during life or at death, was subject to the federal estate tax or gift tax within the meaning of § 26.2652-1(a)(2).

As mentioned above, Taxpayer acquired his United States citizenship solely by reason of his residence within a United States possession. Accordingly, based on the facts presented and representations made, we conclude that Taxpayer is presently considered a “nonresident not a citizen of the United States” for federal estate, gift, and GST tax purposes.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representatives.

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty 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.

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

Sincerely,

Lorraine E. Gardner
Lorraine E. Gardner
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures
Copy for § 6110 purposes
Copy of this letter