

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:INTL:B01 PLR-120964-98

Date:

November 2, 2000

Legend

A =

Dear :

This is in response to your authorized representative's letter of , requesting a ruling on whether A will be treated as a "nonresident not a citizen of the United States" for purposes of U.S. estate and gift taxation. A is a U.S. citizen, and a resident of Puerto Rico. A proposes to transfer property with a value in excess of \$10,000 to A's children.

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.

Section 2501(a)(1) of the Internal Revenue Code of 1986, as amended, provides that a tax, computed as provided in section 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 section 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

PLR-120964-98

“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 section 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 section 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 “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 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 section 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 to all persons who became citizens of Puerto Rico under the Foraker Act.

PLR-120964-98

A became a Puerto Rican citizen under the Foraker Act, and a U.S. citizen under the Jones Act. Therefore, A derives U.S. citizenship solely from being a citizen of a U.S. possession, and A is presently considered a “nonresident not a citizen of the United States” for purposes of applying sections 2209 and 2501(c).

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 A’s U.S. income tax return for the year in which A obtained the ruling (whether or not A is otherwise required to file a return).

The ruling is directed only to the taxpayer(s) 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 A’s authorized representative.

Sincerely,
W. Edward Williams
Senior Technical Reviewer
CC:INTL:Br1