Office of Chief Counsel
Internal Revenue Service
Memorandum

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date: April 29, 2008

to: Associate Area Counsel ( )
(CC:SB:)

from:
Chief, Branch 4
(Procedure & Administration)

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subject: Transferee Liability in Jointly Held Accounts

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

LEGEND

B and C:
Date 1:
Date 2:
Year 1:
Year 2:
State A:
Case X:

Case Y:

ISSUES

Whether under the law of State A, any interest in a joint account that was fully funded by the deceased taxpayer transferred to the joint tenant of the account before the taxpayer's death.

CONCLUSIONS

Under the law of State A, no interest in a joint account that was fully funded by the deceased taxpayer transferred to the joint tenant of the account before the taxpayer's death.

FACTS

On Date 1, the taxpayer opened and fully funded two joint brokerage accounts, one account with each of B and C as joint tenant with right of survivorship. Following the opening of the accounts, the taxpayer accrued a liability for the Year 1. The taxpayer died on Date 2, before filing the taxpayer's Year 1 return. In Year 2, a return for Year 1 was finally filed, and the Service made an assessment of $. The Service has not filed a notice of federal tax lien.

LAW AND ANALYSIS

In determining the nature and extent of a taxpayer's interest in particular property, one must look to the law of the state where the property is located. In this case, we must determine when B's and C's interest in the joint accounts arose under the law of State A. If their interests arose when the taxpayer funded the accounts, while the taxpayer was solvent and before the taxpayer's liability arose, they are not liable as transferees. However, if their interest did not arise until the taxpayer's death, after the accrual of the taxpayer's liability, they may be liable as transferees.

In Case X, the circuit court held that under common law the creation of a joint account evinces the intent of the party funding the account to make an inter vivos gift to the other tenant at the time of the account's creation. However, in 1976, the legislature of State A changed the law of State A respecting joint accounts. According to State A's statutes, during the lifetime of joint tenants in an account, the joint account belongs to the parties in proportion to the net contributions of each party to the account unless there is clear and convincing evidence of another intent. Upon the death of one of the joint tenants, the sum remaining in the joint account belongs to the other joint tenant by right of survivorship unless there is clear and convincing evidence of another intent by the parties.

The legislative comments accompanying the statute of State A state clearly that "a person who deposits funds in a. . . [joint account] normally does not intend to make an irrevocable gift of all or any part of the funds represented by the deposit. Rather, the depositor usually intends no change of ownership." Unlike under common law, no ownership interest in the deposits of one tenant in a joint account transfers to the other joint tenant while the depositing tenant is alive. The right of survivorship in a joint account "really is a right to the values theretofore owned by another which the survivor receives for the first time at the death of the owner. That is to say, the account operates as a valid disposition at death rather than as a present joint tenancy." Id.

According to the Supreme Court of State A, the right of survivorship in a joint account is a substitution for a testamentary device. And "

." Case Y. The transfer of title to a joint account by right of survivorship does not occur until the death of the other joint tenant.

In a case similar to this case, the Seventh Circuit affirmed the Tax Court's determination that petitioners, who were joints tenants on a bank account, as well as beneficiaries of a totten trust, were liable as transferees upon the taxpayer's death. Berliant v. CIR, 729 F.2d 496 (7th Cir. 1984). The Tax Court determined that the taxpayer had supplied all of the contributions to the joint account and the trust and was the sole signatory on the trust; therefore, the taxpayer was the owner of the funds in the joint account and the trust, and no interest "transferred" to the petitioner's until the taxpayer's death. Id., at 499.

In this case, taxpayer deposited all of the funds in the two joint brokerage accounts. Therefore, under the statutes of State A, the entire brokerage account belonged to the taxpayer during the taxpayer's lifetime, assuming there is no evidence of any other intent. B and C had no ownership rights in the accounts during the taxpayer's lifetime. Only at the time of taxpayer's death, after the taxpayer's tax liability arose, was ownership of the accounts transferred to B and C by right of survivorship. Therefore, B and C may be liable to the extent of the money in the joint accounts as a transferee of the taxpayer.

Please call Kevin Connelly at (202) 622-3630 if you have any further questions.