

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:04
PLR-104944-07
Date: JUNE 13, 2008

- Legend:
- Decedent =
 - Sibling =
 - A =
 - B =
 - Personal Representative =
 - State =
 - State Court =
 - Bank =
 - Country A =
 - Annuity 1 =

 - Annuity 2 =

 - Annuity 3 =

 - X% =
 - Date 1 =
 - Date 2 =
 - Date 3 =
 - Date 4 =
 - \$a =
 - \$b =
 - \$c =
 - \$d =

Dear :

This is in response to your authorized representative's letter of January 22, 2007, requesting a ruling regarding the application of § 2103 of the Internal Revenue Code to the proceeds of certain annuity contracts.

The facts and representations are as follows. Decedent's sibling, Sibling, a citizen of the United States and a resident of State, owned three annuity contracts, Annuity 1, Annuity 2, and Annuity 3. The annuity amounts were to be paid to Sibling during his life. Decedent was designated as a beneficiary of the three annuities after Sibling's death. Sibling died on Date 1. As a designated beneficiary, Decedent became entitled to receive the entire proceeds of Annuity 1 and Annuity 2 and X% of the proceeds of Annuity 3 (collectively, the "Annuity Proceeds").

Decedent was a citizen and resident of Country A, where she was living at Sibling's death and all times thereafter. Decedent died on Date 2. At the time of Decedent's death, Decedent had not yet submitted a claim for or been paid any portion of the Annuity Proceeds and accrued interest. Rather, the proceeds of Annuity 1, Annuity 2, and Annuity 3 were being held by the respective companies that issued the contracts. Decedent had not engaged in a trade or business in the United States.

Under the terms of Decedent's will, Decedent's entire estate was bequeathed to A, who is also a citizen and resident of Country A. On Date 3, Personal Representative instituted an ancillary probate proceeding in State Court to admit Decedent's will to probate. On Date 4, letters of administration were issued to Personal Representative to administer Decedent's State assets (the Annuity Proceeds).

An estate tax return (Form 706NA) has not yet been filed for Decedent's estate. You have asked us to rule that the Annuity Proceeds, including interest accrued thereon through the date of Decedent's death, are not considered assets situated in the United States in determining the property includible in Decedent's gross estate under § 2103.

Law and Analysis:

Section 2101 provides that a tax is imposed on the transfer of the taxable estate of every decedent nonresident not a citizen of the United States.

Section 2103 provides that for the purpose of the tax imposed by § 2101, the value of the gross estate of every decedent nonresident not a citizen of the United States shall be that part of his gross estate which at the time of his death is situated in the United States.

Under § 2105(b)(1), amounts described in § 871(i)(3) are treated as property situated outside the United States if any interest thereon would not be subject to tax by reason of § 871(i)(1) were such interest received by the decedent at the time of death.

Section 871(a) generally imposes a 30 percent tax on certain U.S. source investment income, including interest (other than interest that is exempt from tax under the Code) earned by a nonresident alien individual. Section 871(i)(1) and (2) exempts interest on certain deposits, if the interest is not effectively connected with the conduct of a trade or business within the United States. Under § 871(i)(3), the term “deposit” includes amounts held by an insurance company under an agreement to pay interest thereon.

In the instant case, at the time of Decedent’s death, the Annuity Proceeds were held by the companies that had issued Annuity 1, Annuity 2, and Annuity 3. Based on the information and representations, we conclude that these amounts held by the issuing companies constitute deposits as described in § 871(i)(3), and that interest thereon would not be subject to tax by reason of § 871(i)(1) were such interest received by Decedent at the time of death. Therefore, the Annuity Proceeds are not deemed property situated within the United States under § 2105(b)(1), and are excluded from Decedent’s gross estate for estate tax purposes under § 2103.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the foregoing transactions under the cited provisions or any other provisions of the Code or regulations. Specifically, no opinion is expressed or implied regarding the income tax treatment of the Annuities.

Under a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

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 yours,

George Masnik
Branch Chief, Branch 4
Office of Associated Chief Counsel
(Passthroughs and Special Industries)