

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

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

Telephone Number:

Refer Reply To:  
CC:PSI:B04  
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Date: AUGUST 18, 2008

### Legend:

Taxpayer =  
Country =  
Year 1 =  
Year 2 =  
Year 3 =  
Year 4 =  
Date =

Dear :

This is in response to your letter dated July 4, 2007, and subsequent correspondence, requesting rulings under §§ 2501(c) and 2209 of the Internal Revenue Code.

### FACTS

Taxpayer's mother was born in Puerto Rico in Year 1. Upon her birth, Taxpayer's mother acquired Puerto Rican citizenship under Section 7 of the Foraker Act of April 12, 1901, 31 Stat. 77, 79 (1900). Taxpayer's mother, subsequently acquired United States citizenship through the collective naturalization granted to Puerto Rican citizens under Section 5 of the Jones Act of May 2, 1917, 39 Stat. 951, 953. Taxpayer's father was a citizen of Country. Taxpayer was born in Country on Date. Taxpayer and his family moved to the United States in Year 2 and to Puerto Rico in Year 3. Taxpayer's father became a naturalized citizen of the United States in Year 4. Taxpayer was under the age of eighteen when Taxpayer's father became a naturalized citizen. Except for a five-year period during which Taxpayer attended college in the United States, Taxpayer has continuously resided in Puerto Rico since Year 3.

You have requested a ruling that, for federal estate and gift tax purposes under §§ 2501(c) and 2209, Taxpayer is a “nonresident not a citizen of the United States” and will continue to be a “nonresident not a citizen of the United States” for such time as he remains a resident of Puerto Rico or another possession of the United States and until the time of his death provided that at such time he is a resident of Puerto Rico or another possession of the United States. Taxpayer is requesting this ruling for purposes of federal estate and gift tax planning.

Taxpayer represents that he obtained United States citizenship under Section 313 of the Nationality Act of 1940, 54 Stat. 1137, 1145. In addition, Taxpayer represents that: (a) he was born outside the United States; (b) his mother was a citizen of the United States at the time of his birth and never thereafter ceased to be a citizen of the United States; and (c) his father was an alien at the time of Taxpayer’s birth. Taxpayer further represents that, due to the date of his father’s naturalization, he acquired U.S. citizenship under Section 313 of the Nationality Act of 1940 because he was under the age of eighteen in Year 4, and a resident of Puerto Rico at the time of his father’s naturalization. Taxpayer continues to reside permanently in Puerto Rico.

#### LAW AND ANALYSIS

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, except as provided in § 2501(a)(3), § 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 tax imposed by this chapter, be considered a “citizen” of the United States within the meaning of that term wherever used in this title 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 25.2501-1(d) of the Gift Tax Regulations provides that the term “nonresident not a citizen of the United States” includes a person who makes a gift after September 14, 1960, and who at the time of making the gift, was domiciled in a possession of the United States and was a United States citizen, and who acquired his United States citizenship solely by reason of his being a citizen of such possession or by reason of his birth or residence within such possession. The gift of such person is, therefore, subject to the tax imposed by § 2501 in the same manner in which a gift is

subject to the tax when made by a donor who is a “nonresident not a citizen 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 tax imposed by this chapter, be considered a “nonresident not a citizen of the United States” within the meaning of that term wherever used in this title, but only if such 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, shall apply to a transfer only if the property is situated within the United States.

Sections 2208 and 2209 establish rules specifying the status, for federal estate tax purposes, of a person who is a citizen of the United States and a resident of a United States possession at their death.

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 death shall, for purposes of the tax imposed by this chapter, be considered a “citizen” of the United States within the meaning of that term wherever used in this title unless the individual acquired 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” is considered to include a decedent dying after September 14, 1960, who, at the time of his death, was domiciled in a possession of the United States and was a United States citizen, and who acquired his United States citizenship solely by reason of his being a citizen of such possession or by reason of his birth or residence within such possession. The estate of such a decedent is, therefore, subject to the tax imposed by § 2101 which is the tax applicable in the case of a “nonresident not a citizen 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 tax imposed by this chapter, be considered a “nonresident not a citizen of the United States” within the meaning of that term wherever used in this title, 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 313 of the Nationality Act of 1940 provided that a child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such alien parent is naturalized, be deemed a citizen of the United States, when: (a) such naturalization takes place while such child is under the age of eighteen years; and (b) such child is residing in the United States at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of eighteen years.

As discussed above, Taxpayer represents that he obtained United States citizenship under Section 313 of the Nationality Act of 1940, 54 Stat. 1137. Taxpayer represents that: (a) he was born outside the United States; (b) his mother was a citizen of the United States at the time of his birth and never thereafter ceased to be a citizen of the United States; and (c) his father was an alien at the time of Taxpayer's birth. Taxpayer further represents that, due to the date of his father's naturalization, he acquired U.S. citizenship under Section 313 of the Nationality Act of 1940 because he was under the age of eighteen and a resident of Puerto Rico at the time of his father's naturalization in Year 4, and taxpayer continues to reside permanently in Puerto Rico. Thus, Taxpayer acquired his U.S. citizenship by reason of his residence in Puerto Rico.

We conclude that Taxpayer is a "nonresident not a citizen of the United States" for purposes of § 2501(c) and will continue to be a "nonresident not a citizen of the United States" for purposes of § 2501(c) for such time as he remains a resident of Puerto Rico or another possession of the United States. In addition, Taxpayer will be a "nonresident not a citizen of the United States" for purposes of § 2209 at the time of his death provided that at such time he is a resident of Puerto Rico or another possession of the United States.

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. No opinion is expressed about the tax treatment of Taxpayer under other provisions of the Code and regulations. Specifically, no opinion is expressed regarding the tax treatment of Taxpayer under § 937 of the Code.

The rulings contained in this letter are based upon information and representations submitted by 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 a ruling, it is subject to verification on examination.

This 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 your representative.

Sincerely,

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

Enclosures

Copy for § 6110 purposes  
Copy of this letter