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Internal Revenue Service (I.R.S.)

Technical Advice Memorandum

Issue: December 12, 1997
August 20, 1997

Section 2101 -- Tax Imposed v. Not Imposed on Estates on Nonresidents Not Citizens

2101.00-00 Tax Imposed v. Not Imposed on Estates on Nonresidents Not Citizens

TAM-107874-97

Taxpayer's Name:

Taxpayer's ID Number:

Taxpayer's Address:

Date of Death:

No Conference

District Director:

LEGEND:

Decedent =

ISSUE:

Is Decedent's estate eligible to claim the estate tax benefits under the Revised Protocol Amending the 1980 U.S.-Canada Income Tax Convention which entered into force on November 9, 1995 ("the Protocol")?

CONCLUSION:

Decedent's estate is eligible to claim the estate tax benefits under the Protocol.

FACTS:

Decedent died in 1992, a Canadian citizen, domiciled in Canada. The facts submitted indicate that the date of death value of Decedent's U.S. situs assets

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was approximately \$310,000. The date of death value of Decedent's worldwide gross estate was approximately \$629,120. Decedent's estate filed a Form 706NA that was received by the Internal Revenue Service on December 11, 1996.

On the return, as filed, the estate claimed an exemption from U.S. estate tax with respect to the U.S. situs property pursuant to the "small estate exemption" under Article XXIX B of the Convention.

LAW AND ANALYSIS:

Section 2101(a) of the Internal Revenue Code provides that an estate tax is imposed on the transfer of the taxable estate (determined as provided in § 2106) of every decedent nonresident not a citizen of the United States. Section 2103 provides that, for purposes 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 the gross estate (determined as provided in § 2031) which at the time of death is situated in the United States.

Under Article 21, paragraph 4, the estate tax provisions of the Protocol generally apply to estates of decedents dying after November 9, 1995.

However, paragraph 4 of Article 21 of the Protocol provides that the Protocol will also apply to estates of decedents dying after November 9, 1988, as follows:

... [P]aragraphs 2 through 8 of Article XXIX B (Taxes Imposed by Reason of Death) of the Convention ... shall, notwithstanding any limitation imposed under the law of a Contracting State on the assessment, reassessment or refund with respect to a person's return, have effect with respect to deaths occurring after the date on which the Protocol enters into force and, provided that any claim for refund by reason of this sentence is filed within one year of the date on which the Protocol enters into force or within the otherwise applicable period for filing such claims under domestic law, with respect to benefits provided under any of those paragraphs with respect to deaths occurring after November 10, 1988.

Article 19 of the Protocol added new Article XXIX B to the Convention. Paragraph 8 of Article XXIX B, "Taxes Imposed by Reason of Death," states:

Provided that the value, at the time of death, of the entire gross estate wherever situated of an individual who was a resident of Canada (other than a citizen of the United States) at the time of death does not exceed 1.2 million U.S. dollars or its equivalent in Canadian dollars, the United States may impose its estate tax upon property forming part of the estate of the individual only if any gain derived by the individual from the alienation of such property would have been subject to income taxation by the United States in accordance with Article XIII (Gains).

Article 21, paragraph 4 of the Protocol explicitly extends the benefits available under the Protocol to estates of decedents dying after November 10, 1988. If the benefit must be claimed through a refund procedure, then the paragraph provides a limited time frame in which a claim for refund can be filed, and the benefits claimed. However, there is no similar limitation in the case of a late filed return where a refund procedure is not required to claim the Protocol benefits. Accordingly, we conclude that Decedent's estate is eligible to claim the estate tax benefits under the Protocol.

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CAVEAT

A copy of this technical advice memorandum is to be given to the Taxpayer. Section 6110(j)(3) provides that it may not be used or cited as precedent.

This document may not be used or cited as precedent. Section 6110(j)(3) of the Internal Revenue Code.

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