Subchapter B. Estates of Nonresidents Not Citizens

Section 2105.—Property Without the United States

26 CFR 20.2105–1: Estates of nonresidents not citizens; property without the United States.

Special funds deposited in a bank in the United States by or for a nonresident alien and held by such bank as fiduciary are treated as property within the United States; G.C.M. 22419 superseded.

Rev. Rul. 69–596 [1]

The purpose of this Revenue Ruling is to update and restate under the current statute and regulations the position set forth in G.C.M. 22419, C.B. 1940–2, 288. This ruling relates to whether funds placed with a bank within the United States by or for a nonresident not a citizen of the United States and held by such bank as trustee or as custodian are considered "deposits with persons carrying on the banking business" in determining the situs of such property for Federal estate tax purposes.

Section 2105(b) of the Internal Revenue Code of 1954, as amended by P.L. 89–809 (Foreign Investors Tax Act of 1966), C.B. 1966–2, 656, relating to property without the United States, provides:

> Certain Bank Deposits, Etc.—For purposes of this subchapter—
> (1) amounts described in section 861(c) if any interest thereon, were such interest received by the decedent at the time of his death, would be treated by reason of section 861(a)(1)(A) as income from sources without the United States, * * * shall not be deemed property within the United States.

Section 861(c) of the Code, referred to in section 2105(b), relating to income from sources within the United States includes "deposits with persons carrying on the banking business."

Deposits with a bank are either general or special. A general deposit consists of money paid to a bank for the convenience of the depositor and to his general credit to be repaid in current funds on his order or demand. Title to the money passes to the bank, and the money is mingled with the bank's general funds and used in the banking business. The relationship of debtor and creditor is created by such a deposit. The deposits to which section 2105(b) refers are those general deposits to which the owner has substantially unrestricted access, such as in ordinary checking and savings accounts (including certificates of deposit) available at most banks.

A special deposit is made where property (including money) is delivered to a bank for the purpose of having it safely kept and the identical property deposited is to be returned to the depositor, or where the property delivered to the bank is for some specific purpose not contemplating a credit or general account. In the case of the special deposit, the property deposited may not be commingled with other funds or assets of the bank and used in the banking business, and with respect to it a fiduciary relationship, of either principal and agent, bailor and bailee, trustee and cestui que trust, or a combination of such relationships, is created between the bank and the depositor.

Funds that are held by a bank as trustee or as custodian acting in a fiduciary capacity do not come within the scope of section 2105(b). The beneficiary's claim to these moneys is usually restricted in some manner, such as by the trustee bank's power to approve or disapprove any distribution of the funds to him. "A deposit so hedged about with restrictions is not properly a bank deposit at all; at least there is no reason to suppose that it is within the scope of * * * [the predecessor of section 2105(b) of the 1954 Code]." *City Bank Farmers Trust Co.* v. *Pedrick*, 168 F. 2d 618, 620 (1948), certiorari denied, 335 U.S. 898 (1948). See also *Estate of Fredericka Lowenstein* v. *Commissioner*, 17 T.C. 60 (1951).

Therefore, funds placed with a bank within the United States by or for a nonresident not a citizen of the United States and held by such bank as fiduciary do not constitute "deposits with persons carrying on the banking business." Accordingly, they are treated as property within the United States for Federal estate tax purposes.

G.C.M. 22419 is hereby superseded since the positions set forth therein is restated under current law in this Revenue Ruling.

[1] Prepared pursuant to Rev. Proc. 67–6, C.B. 1967–1, 576.

Chapter 12—Gift Tax

Subchapter B. Transfers

Section 2511.—Transfers in General

26 CFR 25.2511–1: Transfers in general.

The transfer to a trust of jointly-held independently severable property with reserved joint and survivor life estates is a reciprocal exchange between joint tenants, not a gift, to the extent the transfers are of equal value.

Rev. Rul. 69–505

Advice has been requested as to the treatment, for Federal gift tax purposes, of certain transfers under the circumstances described below.

A and *B* owned certain property as joint tenants. Under applicable state law, the tenancy could be severed by the independent action of either but if not severed the property would pass to the survivor upon the death of one cotenant. They transferred this jointly-held property valued at $20,000.00 to a trust. Under the terms of the trust agreement, the trustee is directed to pay one-half of the income from the transferred property to each of the donors for life and all to the survivor for life. At the death of the survivor, all payments of income shall cease and the trustee is directed to distribute the trust principal to a named individual, *C*. As of the date of the transfer, *A* was aged 50 and *B* was aged 47.

For the purpose of the Federal gift tax, the value of the gift is the value of

the property transferred less the value of the donor's retained rights in the property. Section 25.2511–1(e) of the Gift Tax Regulations.

The factor which represents the present worth at the time of the gift of the life estate retained by *A* is $0.51970. The present worth at the time of the gift of the life estate retained by *B* is $0.55436. The present worth of the right to receive the income from $1.00 for such time as *A* survives *B* is $0.08265. The present worth of the right to receive the income from $1.00 for such time as *B* survives *A* is $0.11731. The present worth of $1.00 due at the death of the last to die of *A* or *B* is $0.36299. The above factors are based upon U.S. Life Table 38 and interest at 3½ percent.

Where each of two cotenants acting alone may sever jointly-held property, each is considered to have an equal interest in the property. Section 25.2515–2(b)(1) of the regulations. The gratuitous transfer of such property results in a gift by each of one-half the value of the property. Where, as here, the jointly-held property is made the corpus of a trust, with reserved joint and survivor life estates, each donor is considered to have retained for his life the right to receive the income from his interest. A method of computing the retained rights of the donors and the amount of gifts may be illustrated as follows:

Donor A:	
One-half value of property	$10,000.00
Less retained rights $10,000.00 x factor $0.51970	5,197.00
	4,803.00
Property transferred:	
(a) to *B*—$10,000.00 x factor $0.11731	1,173.10
(b) to *C*—$10,000.00 x factor $0.36299	3,629.90
	4,803.00
Donor B:	
One-half value of property	10,000.00
Less retained rights $10,000.00 x factor $0.55436	5,543.60
	4,456.40
Property transferred:	
(a) to *A*—$10,000.00 x factor $0.08265	826.50
(b) to *C*—$10,000.00 x factor $0.36299	3,629.90
	4,456.40

Recapitulation

	Donor A	Donor B
Transfer to *C*	$3,629.90	$3,629.90
Net transfer to other joint tenant	346.60	0.00
Total gifts made by parties	3,976.50	3,629.90

The transfers between the joint tenants are treated as a reciprocal exchange for consideration in money or money's worth. See *United States* v. *Estate of Joseph P. Grace*, 395 U.S. 316 (1969) Ct. D. 1927, page 173, this Bulletin. Thus, neither is considered to have made a gift to the other to the extent that the transfers are of equal value. Here, *A* transferred to *B* an interest in property valued at $1,173.10 and *B* transferred to *A* an interest valued at $826.50. Since the gift by *B* is less than the gift by *A*, *A* is deemed to have made a gift to *B* of the difference in the amount of $346.60.

Subtitle C—Employment Taxes

Chapter 21—Federal Insurance Contributions Act

Subchapter B. Tax on Employers

Section 3111.—Rate of Tax

26 CFR 31.3111–3: When employer tax attaches.

Vacation and bonus pay. See Rev. Rul. 69–587, page 108.

Subchapter C. General Provisions

Section 3121.—Definitions

26 CFR 31.3121(a)–1: Wages. (Also Sections 3306, 3401; 31.3306(b)–1, 31.3401(a)–1.)

Amounts charged against so-called contract coal miners accounts that represent charges or expenditures for supplies or services for personal use are wages; however, amounts for items used in mining operations are not; S.S.T. 138 and S.S.T. 326 superseded.

Rev. Rul. 69–451 [1]

The purpose of this Revenue Ruling is to update and restate, under the current statute and regulations, the positions set forth in S.S.T. 138, C.B. 1937–1, 442, and S.S.T. 326, C.B. 1938–2, 325.

The question presented concerns the proper method of computing the "wages" of certain contract coal miners, for purposes of the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and the Collection of Income Tax at Source on Wages (chapters 21, 23, and 24, respectively, subtitle C, Internal Reve-

[1] Prepared pursuant to Rev. Proc. 67–6, C.B. 1967–1, 576.