

# Death and Taxes

## A monthly column on tax issues and estate planning

*Marjorie Rawls Roberts, Esq., P.C.*

### Birth or Naturalization in the US Possessions Provides Special Estate and Gift Tax Benefits

Persons who obtain their US citizenship by reasons of their birth or naturalization in any of the US possessions, are treated for US gift and estate tax purposes as non-citizens not resident in the United States ("Non-residents") when they reside in one of the possessions at the time a gift is made or at the time of death. Such persons can legally avoid all estate and gift taxes on all of their assets if any US situs assets (assets physically located in the US) are held through a USVI corporation or they hold only non-US situs assets.

A non-resident's estate is determined in the same way, as the gross estate of a US citizen who was not born or naturalized in a US possession, no matter where the property is located. However, only the part of the gross estate that is located in the United States is subject to the US estate tax – and the rest of the estate can be free of any tax. When determining the location of assets for US estate and gift tax purposes, the "United States" includes the 50 states and the District of Columbia, but not the possessions.

The estate tax must be computed first, but only for US situs assets, and then reduced by certain credits. For a non-resident who resides in a US possession, the estate qualifies for a maximum credit of US \$46,800.

For gifts made by non-residents, the gift tax applies to a transfer only if the property is situated in the United States. For such gifts, the US \$12,000 annual exclusion (for 2007) applies to such

taxpayers. In addition, lifetime transfers of intangible property, wherever situated, by non-residents are not subject to the gift tax. Consequently, a non-resident can gift stock in a US corporation without limit.

A person who invests directly in US assets can find that he or she is subject to a huge estate or gift tax bill since the maximum credit is only US \$46,800, meaning that US situs assets above US \$175,000 are fully taxable. For example, if a person works in the USVI for a branch of a US corporation and receives stock in the US corporation as part of his or her retirement plan, then that person would be subject to Federal estate tax on the stock at full rates if the stock's value exceeds US \$175,000 at the person's death (above the applicable credit). In contrast, a person born or naturalized in the US does not owe estate tax until the estate exceeds US \$2 million, and does not owe gift tax until lifetime gifts exceed US \$1 million.

In contrast, stock in a USVI corporation is considered to be located in the USVI, even if the corporation in turn owns stocks and real estate located in the United States. Thus, a non-resident who is domiciled in the USVI can invest in US situs assets through a USVI corporation to avoid US estate tax on those assets.

Finally, although USVI law imposes both an inheritance tax and gift tax, the exemptions are such that as a practical matter no one is subject to them.



**Marjorie Rawls Roberts**

It is important to note in any estate and gift tax planning, that residency for estate and gift tax purposes is different than residency for income tax purposes (which is determined annually based on a physical presence test, closer connection test, and tax home test). It is based on the domicile of the taxpayer at the time of death or on the date of the gift. A person acquires a domicile in a place by living there, for even a brief period of time with no definite present intention of moving away. A person can be domiciled in the USVI but not be a bona fide resident for income tax purposes, or alternatively can be a bona fide resident but not a domiciliary.

Because the application of the domicile test requires a determination of the subjective intention of an individual, courts in the estate tax context generally consider factors such as the individual's statements as to his intentions; the location of various residences and the relative sizes and costs of the residences; religious and social club memberships; the location of business activities; the location of the bank accounts and personal property; the jurisdiction where the individual is registered to vote and licensed to drive; and the location of the individual's family.

Suggestions for future columns should be sent to [AskJorie@TradewindsHouseandHome.com](mailto:AskJorie@TradewindsHouseandHome.com).

*The information provided in this column is not legal advice and readers should consult with their professional advisors to determine how this information may apply to their specific circumstances.*