

# Death and Taxes —

## A monthly column on tax issues and estate planning

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

### Moving to the U.S. Virgin Islands? Bring Suntan Lotion, Fins, and IRS Form 8898

Albert Einstein once said: “How I wish that somewhere there existed an island for those who are wise and of good will.” Many U.S. Virgin Islands residents believe that their island home would fit the bill. But, they might wonder, with all his renowned intellect, did Mr. Einstein ever conceive of a situation where moving to such an island would require filing a detailed and personal form with the IRS? The same form must be filed when leaving the territory – or just not being able to spend enough time to call the USVI “home” for tax purposes.

If I were a Constitutional scholar, I would write this column on whether the IRS requirement to File Form 8898, titled “Statement of Individuals Who Begin or End Bona Fide Residence in a U.S. Possession,” violates the right to interstate travel which has been recognized time and again by the U.S. Supreme Court as a fundamental constitutional right under the due process guarantee, the equal protection clause, and the commerce clause. But as a tax attorney, I’ll limit my musings to the current requirements imposed by the IRS.

Form 8898 requires a person to notify the IRS that he or she became or ceased to be a bona fide resident of a U.S. possession in a given year beginning with 2001. The taxpayer must identify the respective U.S. possession and enter the taxpayer’s average worldwide gross income for the three-year period prior to the tax year the taxpayer became or ceased to be a bona fide resident of the U.S. possession.

Form 8898 also requires a taxpayer to indicate the specific date that the taxpayer moved to or from the possession, and the number of days the taxpayer was in the possession and the United States during the year of the move, (even though there was not a requirement to “count” days before 2005). The form further directs taxpayers to list the location of all permanent homes, immediate family members, automobiles, and personal belongings during the tax year, any banks where routine personal banking activities were conducted, where driver’s licenses were issued, any homestead exemptions, the location of investments and voter’s registrations – and lots more information.

A taxpayer must file Form 8898 with the IRS if his or her worldwide gross income for the year of the change in residence is more than \$75,000. Worldwide gross income means all income the taxpayer received in the form of money, goods, property, and services, including any excludable income such as interest from tax-exempt bonds, and before any deductions, credits or rebates.

Failure to file Form 8898 can result in a civil penalty of \$1,000. This penalty is also due if the form is incomplete or incorrect when filed, unless the taxpayer can show that the failure was due to reasonable cause.

The form is due by the due date (including extensions) for filing Form 1040. Therefore if you became a bona fide resident of the USVI in 2006 and



**Marjorie Rawls Roberts**

you will file your Form 1040 with the USVI Bureau of Internal Revenue on October 15, 2007, you should send the Form 8898 to the IRS by that date (certified) to P.O. Box 331, Drop Point S-607, Bensalem, PA 19020-8517. Already filed your return for the year of move? You should then file Form 8898 as soon as you can with the IRS to minimize the likelihood of penalties.

It should be noted that many taxpayers who did not physically move from the USVI were required to file Form 8898 for 2005 due to the changes in the definition of “residency” enacted by the U.S. Congress in 2004. For example, a person who lived in the USVI in 2004 and spent more time in the territory than at any other home, but fewer than 183 days, may likely have been a USVI bona fide resident under the “facts and circumstances test” in place then. Such an individual would not be a bona fide resident for 2005 and later years due to the failure to meet the new physical presence test (assuming the taxpayer did not meet one of the alternative tests) and thus should have filed Form 8898 for 2005 even though the taxpayer didn’t move from the USVI or spend less time in the territory than in the previous year.

Suggestions for future columns should be sent to 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.*