

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:ITA:1-PLR-111780-00
Date:
October 5, 2001

LEGEND:

- Estate =
- Decedent =
- Foreign Country A =
- Foreign Country B =
- Original Ancillary Administrator =
- Current Ancillary Administrator =
- Domiciliary Administrator =
- Court A =
- County A =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =
- Year 1 =
- \$a =
- \$b =
- \$c =
- \$d =
- x =

Dear :

This letter responds to Estate's request for a private letter ruling, dated May 12, 2000. Specifically, Estate has requested a ruling that interest on bank accounts and

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dividends on stock held by Decedent should be included in the gross income of Estate in the taxable years in which actually received.¹

CONCLUSION:

Interest on bank accounts and dividends on stock held by Decedent should be included in the gross income of Estate in the taxable years in which actually received.

FACTS:

Decedent was a citizen of Foreign Country A and died intestate and without heirs on Date 1 while a resident of City A, Foreign Country B. Decedent was born in Foreign Country A and, to the best of Current Ancillary Administrator's knowledge, was never a resident of the United States. Under the law of Foreign Country B, the property of an individual who dies intestate and without heirs passes after a certain number of years to the x in which the decedent died a resident. As representative of the x of City A, Foreign Country B, Domiciliary Administrator was appointed to marshal the assets of Decedent. In the course of marshaling Decedent's assets, the Domiciliary Administrator found that Decedent had owned common stock in a number of United States publicly traded corporations. He was unable, however, to locate the actual stock certificates.

The Domiciliary Administrator prepared and filed Form 706NA United States Estate Tax Return – Estate of a Nonresident not a Citizen of the United States, on or about Date 3. The gross estate as shown on Form 706NA was \$a, consisting of United States publicly traded common stocks valued at \$b; two United States bank accounts valued at \$c; and non-United States assets valued at \$d.

Generally, assets located in the United States, including bank accounts and stock, that are unclaimed after a certain period of time are held by the abandoned

¹ Estate also requested rulings regarding whether, for the taxable years in which Estate must include the interest and dividends in gross income, (1) Estate is required to file fiduciary income tax returns; (2) the tax rate imposed on the interest and dividends is the rate imposed under the applicable United States/Foreign Country A tax treaty; and (3) Current Ancillary Administrator is required to withhold income tax on the distribution of Estate's remaining income to the Domiciliary Administrator. These rulings, however, are dependent on a determination of whether Estate is a foreign estate. In a letter of Date 2, the Service cited section 4.01 of Rev. Proc. 99-7, 1999-1 I.R.B. 226, and explained that rulings ordinarily will not be issued with respect to whether an estate or trust is a foreign estate or trust for federal income tax purposes under § 7701 of the Internal Revenue Code. Accordingly, we are unable to rule on these three issues.

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property division of the state in which the property is located until claimed by the owner or a qualified representative of the owner. The Domiciliary Administrator in Country B was not qualified to legally receive Decedent's United States assets. Thus, the Domiciliary Administrator engaged the services of Original Ancillary Administrator in the United States to assist in locating those assets.

Original Ancillary Administrator was appointed on Date 4 by Court A, County A Division. He was charged with gathering Decedent's assets in the United States and transferring them to the Domiciliary Administrator in Country B. In carrying out that charge, Original Ancillary Administrator wrote to each state treasurer to locate any abandoned property in Decedent's name. From various states, he recovered unpaid interest on Decedent's bank accounts located in the United States and dividends on Decedent's United States stock. In most instances, Original Ancillary Administrator was required to post "Lost Security Indemnification Bonds" to recover the interest and dividends from the abandoned property divisions.

Original Ancillary Administrator served in his capacity as the United States administrator until his death on Date 5. Current Ancillary Administrator was appointed on Date 6 by Court A, County A Division, to complete the administration of Estate in the United States. The Estate uses the cash receipts and disbursements method of accounting and files its returns on the basis of a calendar year.

LAW AND ANALYSIS:

Section 61 provides, in part, that gross income means all income from whatever source derived, including interest and dividends.

Section 451 provides that the amount of any item of gross income is included in gross income for the taxable year in which received by the taxpayer, unless, under the method of accounting used in computing taxable income, the amount is properly accounted for in a different period.

Section 1.451-1 of the Income Tax Regulations provides that gains, profit, and income are to be included in gross income for the taxable year in which actually or constructively received by the taxpayer unless includible for a different year in accordance with the taxpayer's method of accounting. Under the cash receipts and disbursements method, an amount is includible in gross income when actually or constructively received.

Section 1.451-2 provides that income, although not actually reduced to a taxpayer's possession, is constructively received by him in the taxable year during which it is credited to his account, set apart for him, or otherwise made available so that he may draw upon it at any time, or so that he could have drawn upon it during the taxable year if notice of intention to withdraw had been given. However, income is not constructively received if the taxpayer's control of its receipt is subject to substantial

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limitations or restrictions.

Estate uses the cash receipts and disbursements method of accounting and thus must include amounts in gross income when actually or constructively received. Estate did not actually receive interest and dividends until Year 1 and years thereafter. Thus, the issue is whether Estate constructively received any interest or dividends prior to actual receipt.

The doctrine of constructive receipt treats as taxable income amounts that are unqualifiedly subject to the demand of the taxpayer, whether or not the income has actually been received in cash. Ross v. Commissioner, 169 F.2d 483, 490 (1st Cir. 1948). In Ross, the court stated:

The doctrine of constructive receipt was, no doubt, conceived by the Treasury in order to prevent a taxpayer from choosing the year in which to return income merely by choosing the year in which to reduce it to possession. Thereby the Treasury may subject income to taxation when the only thing preventing its reduction to possession is the volition of the taxpayer.

Ross, 169 F.2d at 491. Thus, the basis of the constructive receipt doctrine essentially is unfettered control by the taxpayer over the date of actual receipt. Hornung v. Commissioner, 47 T.C. 428, 434 (1967), acq., 1967-2 C.B. 2.

In the instant case, the interest and dividends earned on Decedent's assets after his death were set apart and made available to Decedent's qualified representative. However, a qualified representative was not appointed to Estate until Date 4, when Original Ancillary Administrator was appointed by Court A, County A Division. There is no indication that there was an intentional or unreasonable delay in appointing Original Ancillary Administrator. Thus, there could be no constructive receipt of the interest and dividends prior to Year 1.

Further, Estate's control over the interest and dividends was subject to substantial limitations and restrictions. Once Original Ancillary Administrator was appointed, he was charged with recovering Decedent's United States assets from the various states. He wrote to every state treasurer in the 50 states and asked if they had any abandoned property in Decedent's name. In most instances, he was required to post lost security indemnification bonds to recover the assets.² There is no indication that there was an intentional or unreasonable delay by Original Ancillary Administrator

² Although the posting of a bond alone may be a ministerial act in some cases, see, e.g., Estate of Shelton v. Commissioner, 612 F.2d 1276 (10th Cir. 1980), the facts of the instant case, as a whole, indicate that there were substantial restrictions on Estate's control over the interest and dividends.

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in recovering the interest and dividends. Under these particular facts and circumstances, Estate did not have unfettered control over the date of actual receipt of the interest and dividends. See Nitterhouse v. United States, 207 F.2d 618 (3d Cir. 1953) (eminent domain proceeds were not constructively received at the time of the taking because taxpayer was required to show clear title to the land and obtain a court order before being entitled to the proceeds); Estate of Sutton v. Commissioner, 5 T.C.M. 213 (1946) (dividends set aside for decedent's estate were not constructively received by estate until administrator could demonstrate right to draw upon dividends). Thus, interest on bank accounts and dividends on stock held by Decedent should not be included in the gross income of Estate until actually received.

Except as expressly provided herein, no opinion is expressed or implied concerning the estate tax or income tax consequences of any aspect of any item discussed or referenced in this letter. This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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 the taxpayer's authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely,
Douglas A. Fahey
Assistant to the Chief, CC:ITA:3
Office of Associate Chief Counsel
(Income Tax & Accounting)