From the desk of
J. P. KNEUBUHL

DATE 12 JAN 78

Marge Please file with other confidential papers in Samoa.

You + Ben might want to read this. I do not think LPK should. If you have any questions, let's discuss them in Hawaii.

I paid a lot of money for the report, so would appreciate no use of it by others without my permission. Talk OK; duplication NO!

Jim.

LATHAM & WATKINS
ATTORNEYS AT LAW
555 SOUTH FLOWER STREET
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 485-1234

TO: W. R. Nicholas

DATE: September 15, 1977

FILE NO.: 6422-1

FROM: A. M. Johnson

COPIES TO: John S. Chang

SUBJECT: L. Kneubuhl's Acquisition of American Citizenship

FACTS

For the purpose of this memorandum, the following facts are presented: Recently, the Internal Revenue Service (IRS) released a Technical Advice Memorandum (see copy attached) which, simply put, stated that a citizen of the United States who acquired his or her United States citizenship "solely" by virtue of his or her birth or residence within a possession of the United States shall be considered a "nonresident not a citizen of the United States for purposes of the U.S. estate tax. (See, IRC §§2101, 2104, 2105, 2208 and 2209.) If an individual is considered a nonresident not a citizen of the United States he or she can avoid any U.S. estate tax if no property is owned in the United States. (See, "How the United States Taxes Gifts and Estates of Puerto Ricans," at 1 Successful Estate Planning Ideas and Methods (Prentice-Hall ¶ 6028.)

Our client, Lena Kneubuhl, is a United States citizen who may have acquired her citizenship solely by virtue of her residence within a possession (American Samoa) of the United

States. She would like to know if she falls within that class of individuals defined in the Technical Advice Memorandum. Thus, it is important for us to determine ~~who~~ How she obtained her citizenship since, if she is a citizen solely because of being a resident of American Samoa, the U.S. estate tax provisions will not apply upon her death provided she holds no U.S. property.

The following facts pertaining to Mrs. Kneubuhl's citizenship status are known: Mrs. Kneubuhl was born on Western Samoa in the late 1800's. Her father was a white foreign national, her mother a native Samoan. In 1914, she married Benjamin F. Kneubuhl who was a United States citizen. Mrs. Kneubuhl has never resided in the United States other than for short periods of time. The following facts are assumed: Mrs. Kneubuhl strongly believes that she is a United States citizen although she is unable to determine how she obtained her citizenship status. Further, her daughter also strongly believes that her mother is a citizen of the United States and believes that when she and her brother received Certificates of Citizenship in 1949, Mrs. Kneubuhl may also have been naturalized or given a Certificate of Citizenship at the same time. Hence, according to Mrs. Kneubuhl and her daughter, Mrs. Kneubuhl is a citizen and probably acquired that citizenship status in 1949.

QUESTIONS PRESENTED

1. Assuming no definitive proof can be gathered illustrating how Mrs. Kneubuhl obtained her citizenship, is it reasonable to assume Mrs. Kneubuhl obtained her citizenship solely by being a resident of American Samoa?

2. Assuming documentary evidence can be found to illustrate how Mrs. Kneubuhl obtained her citizenship, how will this support or destroy our reasonable assumption that Mrs. Kneubuhl obtained her citizenship solely by virtue of being a resident of a possession of the United States?

CONCLUSION

An examination of the immigration laws in effect between 1914 and 1950 reveals that it is reasonable to assume that Mrs. Kneubuhl obtained her citizenship solely by virtue of being a resident of American Samoa, a U.S. possession. Assuming the facts as given are correct, it appears that Mrs. Kneubuhl was naturalized under the Nationality Act of 1940, ch. 876, 54 Stat. 1137, as amended by the Act of July 2, 1946, Pub. L. No. 79-483. If it can be shown that Mrs. Kneubuhl was naturalized under certain provisions of the Nationality Act of 1940 then Mrs. Kneubuhl fits into that class of individuals defined by the Technical Advice Memorandum prepared by the IRS and hence, her estate will not be subject to U.S. estate tax upon her death.

However, if documentary evidence can be found which indicates that Mrs. Kneubuhl received a Certificate of Citizenship rather than a Certificate of Naturalization, it may be that she obtained her citizenship by virtue of marriage to

an American citizen and hence, does not fall within that class of individuals defined in the Technical Advice Memorandum. As discussed below, however, this seems unlikely because of the limitation on non-whites being granted citizenship status by marriage. Finally, if no documentary evidence can be discovered relating to Mrs. Kneubuhl's citizenship status, other than a passport, Mrs. Kneubuhl may not be a citizen of the U.S. but merely a national of the United States and native inhabitant of American Samoa.

DISCUSSION

I. AN EXAMINATION OF IMMIGRATION LAW REVEALS THAT MRS. KNEUBUHL COULD ONLY HAVE BEEN LEGALLY NATURALIZED UNDER THE NATIONALITY ACT OF 1940.

A. Introduction.

This section represents an attempt to discover how Mrs. Kneubuhl obtained her citizenship. Of course, this attempt assumes that Mrs. Kneubuhl is a citizen and furthermore it assumes that the facts as given are essentially correct. Thus, one is left with the difficult task of attempting to ascertain how Mrs. Kneubuhl obtained her citizenship between 1914 and 1949 based on the sketchy facts as given.

B. Marriage

Primary concern must be given to the possibility that Mrs. Kneubuhl obtained her citizenship by virtue of her marriage to a United States citizen in 1914. If it can be

shown that Mrs. Kneubuhl obtained her citizenship by her marriage to a U.S. citizen, then she will not fit within that class of individuals who obtain their citizenship solely by virtue of being a resident in a United States possession. Hence, an examination of this possibility is warranted.

In 1855, Congress enacted a statute which remained in effect until 1922. That statute, which dealt with aliens marrying citizens, stated:

> "Sec. 2. And be it further enacted. That any woman who might fully be naturalized under the existing laws, married, or who shall be married to a citizen of the United States, shall be deemed and taken to be a citizen."
>
> Act of February 10, 1855, Section 2, Ch. 71, 10 Stat. 604.

This language was later amended and incorporated in the Revised Statutes of the United States, §1994 (U.S. Comp. Stat. 1901, p. 1268) as follows:

> "Any woman who is now, or may hereafter be, married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen."

The above Revised Statute remained in effect until 1922 when it was repealed by the Cable Act of September 2, 1922, Section 2, Ch. 411, 42 Stat. 1021.

More importantly, the only women "who might herself be lawfully naturalized" under Revised Statute §1994 was defined in Rev. Stat. §2169 (U.S. Comp. Stat. 1901, p. 1333).

> "The provisions of this Title shall apply to aliens being free white persons, and to aliens of African nativity and to persons of African descent."

All of the above statutes were in effect at the time Mrs. Kneubuhl married Mr. Kneubuhl in 1914. Thus, there is a possibility that she automatically became a citizen of the United States upon her marriage to Mr. Kneubuhl. In other words, if Mrs. Kneubuhl fell within that class of individuals "who might herself be lawfully naturalized," she automatically would become a United States citizen upon her marriage to Benjamin Kneubuhl. She would not have to file any petitions, declarations or other documentary evidence to acquire naturalization. Citizenship would automatically vest, with no judicial or administrative participation, on Mrs. Kneubuhl upon her marriage to Mr. Kneubuhl.

> "The citizenship transmitted under the 1855 Act was absolute and unconditional, and was not dependent upon the subsequent continuation of the marital relationship. 17/"
>
> * * * *
>
> "In all other respects the mandate of the 1855 Act comprehensively required that the citizenship of a woman married to an American citizen must coincide with that of her husband. 20/ This was so whether the husband was an American citizen at the time of the marriage or thereafter acquired it during the existence of the marital state. 21/ And American citizenship likewise was acquired by an alien woman who married an American citizen outside the United States and who had never lived in this country. 22/ A woman who acquired citizenship in this manner obviously is no longer an alien, and is not subject to exclusion or deportation. 23/
>
> "For 67 years the 1855 Act continued to regulate the citizenship status of women married to American citizens. Most of those who acquired American citizenship under its terms doubtless found the automatic vesting of such citizenship acceptable. But

> this process was flawed since it gave no opportunity for individual volition. Unity of citizenship in the family generally was regarded as desirable, but not when it was a unity compelled without regard to the wife's wishes." (Footnotes omitted.)
>
> 3 Immigration Law and Procedure (Matthew Bender) §18.2 at p. 18-5.

However, an examination of the case law reveals that this automatic vesting of citizenship on Mrs. Kneubuhl upon marriage is a very remote possibility. The case law reveals that Rev. Stat. §1994 was subject to Rev. Stat. §2169. In other words, only an alien white woman could acquire citizenship by virtue of her marriage to an American citizen. Van Dyne in his treatise, Citizenship of the United States, stated at p. 120:

> "What women may be naturalized? What is the meaning of the clause 'who might herself be lawfully naturalized?'
>
> "In Burton v. Burton, 26 How. Pr. 474, it was held the act was designed for the benefit of 'alien white women.'
>
> "The Supreme Court of the United States, in Kelly v. Owen, 7 Wall. 496, 19L. ed. 283, expressed the opinion that the terms of the act limit the application of the law to 'free white women.'
>
> "In Kane v. McCarthy, 63 N.C. 299, it was decided that 'a white woman was not an alien enemy' answered the description required by the section under consideration. To the same effect is 14 Ops. Atty. Gen. 406. See also Sec'y Hays to Mr. Cruger, February 6, 1903.
>
> "In Leonard v. Grant, 6 Sawy. 603, 5 Fed. 11, which was decided after the extension by the act of July 14, 1870 (16 Stat. at L. 254, chap. 254, § 7 U.S. Comp. Stat. 1901, p. 1333), of the naturalization laws to the African, it was declared that the law applied to 'free white persons, or persons of African nativity or descent.'

"And in Broadis v. Broadis, 86 Fed. 951, it was held that an alien woman of African descent, married to a citizen of the United States, is a citizen of the United States, since the extension of the naturalization laws to persons of African birth or descent.

"The act of August 9, 1888 (25 Stat. at L. 392, chap. 818 § 2), provides that every Indian woman, member of any Indian tribe in the United States, or any of its territories except the five civilized tribes in the Indian territory, who may hereafter be married to any citizen of the United States, is declared to become by such marriage a citizen of the United States, with all the rights, privileges, and immunities of any such citizen, being a married woman.

"As the law now stands, therefore, any white woman, or woman of African nativity or descent, or Indian woman, a member of any Indian tribe (except a member of the five civilized tribes in Indian territory), married to a citizen of the United States, is a citizen thereof."

An examination of our fact situation reveals that Mrs. Kneubuhl is not white, or at least would not have been classified as white for the purposes of the naturalization laws in effect at the time of her marriage. Cases which have dealt with the issue of the race of an individual who is half white and half non-white (as is Mrs. Kneubuhl, with a ENGLISH German father and Samoan mother) have uniformly held that the individual is non-white for the purpose of the naturalization laws. For example, in In re Young, 198 F. 715 (1912), the Court stated that an individual who was the son of a German father and a Japanese mother was not a white person within the meaning of Rev. Stat. § 2169 and thus not eligible for naturalization. Further, in In re Knight, 171 F. 299 (1909), the Court stated:

> "In the case of colored persons, a question similar to the one at bar has been raised, and in Re Camille (C.C.) 6 Fed. 256, the applicant, with a white father and an Indian mother, was held not to be a 'white person.' This case is based upon a number of decisions in Ohio, where the question of the mixture of white and red, or white and black, races had been considered; and there seems to be nothing in the present naturalization statute, or any of the acts of Congress, which would lead to a different conclusion. A person, one-half white and one-half of some other race, belongs to neither of those races, but is literally a half-breed."

Finally, any doubt as to the validity of a Samoan obtaining citizenship by marriage to a U.S. citizen was dispelled in 3 Hackworth, Digest of International Law, at p. 155:

> "As Samoans are probably not eligible to naturalization under the provisions of section 2169 of the Revised Statutes of the United States, Samoan women who were married to citizens of the United States prior to September 22, 1922, are not to be considered to have acquired citizenship of the United States under section 1994 of the Revised Statutes, by reason of their marriage. Under the provisions of the act of September 22, 1922, the citizenship status of a woman is not changed by her marriage to a citizen of the United States subsequent to the date of that act."

Thus, it is highly unlikely that Mrs. Kneubuhl automatically obtained her citizenship by marriage to an American citizen between 1914 and 1922. Those statutes which limit, by race, the class of individuals eligible to be naturalized seemingly exclude Mrs. Kneubuhl's acquisition of citizenship by marriage to a U.S. citizen. Rev. Stat. §2169 was in effect primarily until the Nationality Act of 1940 and, prior to 1940, it seems extremely unlikely that Mrs. Kneubuhl could have acquired citizenship by virtue of her marriage to an American citizen either under the 1855

Act (Rev. Stat. §1994 which was in effect until 1922) or later statutes, such as the Cable Act.

C. Naturalization

Having illustrated that it was legally impossible for Mrs. Kneubuhl to obtain her citizenship via marriage, the only reasonable alternative left open for the acquisition of Mrs. Kneubuhl's citizenship is naturalization. Naturalization is generally and commonly defined as the acquisition of citizenship after birth. Laws are generally promulgated by the state to facilitate the granting of citizenship to certain individuals. Hence, if Mrs. Kneubuhl did not automatically acquire her citizenship by virtue of her marriage to a U.S. citizen, then Mrs. Kneubuhl had to become a citizen via naturalization.

The first comprehensive naturalization act which is relevant to our inquiry is the Act to Establish a Bureau of Immigration and Naturalization, ch. 3592, 54 Stat. 596 (June 29, 1906) (hereinafter the Naturalization Act of 1906). The Naturalization Act of 1906 provided the first comprehensive complete immigration laws promulgated in the U.S. and also established the Bureau of Immigration and Naturalization. The Naturalization Act of 1906 (frequently amended) was a primary source of all naturalization laws until the Nationality Act of 1940. The Naturalization Act of 1906 is relevant to our inquiry herein because there is a section of that Act (Section 30) which seems relevant to the current fact situation.

> "Sec. 30. That all the applicable provisions of the naturalization laws of the United States shall apply to and be held to authorize the admission to citizenship of all persons not citizens who owe permanent allegiance to the United States, and who may become residents of any State or organized Territory of the United States, with the following modifications: The applicant shall not be required to renounce allegiance to any foreign sovereignty; he shall make his declaration of intention to become a citizen of the United States at least two years prior to his admission; and residence within the jurisdiction of the United States, owing such permanent allegiance, shall be regarded as residence within the United States within the meaning of the five years' residence clause of the existing law."

An analysis of Section 30 reveals that it may have been possible for Mrs. Kneubuhl to obtain her citizenship via this section in the Naturalization Act of 1906. At first glance, it would seem that American Samoans would fall within that class of individuals enumerated in Section 30. Samoans were not citizens of the U.S. and after Samoa was acquired by the U.S. in 1900, it would seem that the natives would owe their permanent allegiance to the U.S. In addition, the applicant would not be required to renounce his allegiance to any foreign sovereign because he had no foreign sovereign. Thus, perhaps Mrs. Kneubuhl acquired her citizenship earlier than 1949 via the Naturalization Act of 1906 and more particularly, Section 30 of that Act.

On the contrary, numerous factors indicate it would have been impossible for Mrs. Kneubuhl to obtain her citizenship prior to 1940 under the Naturalization Act of 1906. First, legislative history and secondary authorities indicate

Section 30 of the Naturalization Act of 1906 was aimed exclusively at residents of Puerto Rico and the Philippines. For example, Senator Foraker, the primary author of the Naturalization Act of 1906, stated that the inclusion of Section 30 in the Act was designed to provide a means whereby Puerto Ricans and Philippinos could become naturalized U.S. citizens.

> "Mr. FORAKER. I offer an amendment to the bill, to be attached to it as an additional section, which has special reference to Porto Rico and the Philippine Islands. It is a provision that passed the Senate by a unanimous vote--that is, it passed without any opposition, it is perhaps more proper to state--in the Fifth-eighth Congress. I send it to the desk and ask that it may be read.
>
> "The VICE-PRESIDENT. In the absence of objection, the Secretary will read the amendment proposed by the Senator from Ohio.
>
> "The SECRETARY. Insert the following as a new section:
>
> "That all the applicable provisions of the naturalization laws of the United States shall apply to and be held to authorize the admission to citizenship of all persons not citizens who owe permanent allegiance to the United States, and who may become residents of any State or organized Territory of the United States, with the following modifications: The applicant shall not be required to renounce allegiance to any foreign sovereignty; he shall make his declaration of intention to become a citizen of the United States at least one year prior to his admission; and residence within the jurisdiction of the United States, owing such permanent allegiance, shall be regarded as residence within the United States within the meaning of the five years' residence clause of the existing law.
>
> "Mr. MALLORY. If it is the purpose of the Senator from Ohio to enable the residents of Porto Rico and the Philippines to be made citizens of the United States, the object will not be accomplished by that amendment. I do not know that that is the purpose.
>
> Mr. FORAKER. It is not, unless they come to the United States and become citizens of the United States." 40 Cong. Rec. 9359 (1906) (remarks of Sen. Foraker).

Further, Van Dyne's treatise on naturalization, Law of Naturalization, which was published a year after the enactment of the Naturalization Act of 1906, interpreted Section 30 as specifically referring to Puerto Ricans and Philippinos.

> "In In re Gonzales, 118 Fed. 941, the Circuit Court of the United States for the Southern District of New York, in 1902, held that a native Porto Rican woman was an alien, within the meaning of our laws regulating the admission of aliens who come to the United States. But, on appeal, the Supreme Court reversed this decision and decided that the woman, who was a citizen of Porto Rico, was not an alien, within the sense of the immigration laws. Gonzales vs. Williams, 192 U.S., 1.
>
> "Under this decision, citizens of Porto Rico and citizens of the Philippine Islands, while not citizens of the United States, were not aliens, and were not capable of becoming naturalized, for two reasons: 1. The naturalization laws of the United States apply only to aliens. 2. The naturalization laws of the United States require a renunciation of former allegiance. As citizens of Porto Rico and citizens of the Philippine Islands owed allegiance only to the United States, there was no former allegiance for them to renounce.
>
> "Under these circumstances Congress by the Act of June 29, 1906 (34 Stat. at L. 596, Sec. 30), provided for the admission of such citizens as citizens of the United States, upon compliance with our naturalization laws."

Hence, American Samoans do not seem to fall within the purview of this Section of the Naturalization Act of 1906.

Secondly, even though American Samoa was acquired in 1900, no laws were passed pertaining to Samoan natives and their citizenship status until 1940. At the time of the enactment of the Naturalization Act of 1906, American Samoans were not regarded as individuals who owed permanent allegiance to the United States. The Samoans were stateless individuals prior to 1940.

> "There are three unincorporated territories in the United States, Guam, Samoa, and the Panama Canal Zone, for which no treaty or statutory provisions have been made as to the citizenship status of the inhabitants of these territories. Hence, in the absence of such provision, the Department of State issues passports to them as 'inhabitants of Guam, Samoa, or the Canal Zone entitled to the protection of the United States.'
>
> "In connection with these unincorporated territories, with the exception of the Virgin Islands, a peculiar problem is presented with respect to the status of children born in these territories of American fathers. Under the rule of jus soli they do not acquire United States citizenship by birth 'in the United States' within the meaning of the Fourteenth Amendment. On the other hand, it is dubious if they acquire citizenship jure sanguinis, for, according to the law which determines the acquisition of citizenship jure sanguinis, birth must be 'out of the limits and jurisdiction of the United States.' Since these territories are neither 'in the United States,' nor 'out of the limits and jurisdiction of the United States,' it would seem that children born of American fathers in Porto Rico, the Philippine Islands, Guam, Samoa, and the Panama Canal Zone are not born American citizens jure sanguinis and hence are born 'without a country.' So far as determined, no instance was found that the Department of State has as yet ruled upon this point. Congressional definition of the status of these territories, as well as of the political status of the inhabitants, would clarify the problem." (Footnotes omitted.) Gettys, The Law of Citizenship in the U.S., pages 158-159.

Consequently, American Samoans, prior to 1940, did not qualify, as did Puerto Ricans and Phillipinos, as citizens who owed their permanent allegiance to the United States.

Finally, even assuming that Section 30 did include American Samoans and also provided that they were citizens who owed permanent allegiance to the United States, it would still be legally impossible for Mrs. Kneubuhl to become a

United States citizen by virtue of the Naturalization Act of 1906. Primarily, Mrs. Kneubuhl would be barred from taking advantage of Section 30 because she was not a white person as defined by Rev. Stat. Section 2169. Judicial interpretation of Section 30 of the Naturalization Act of 1906 reveals that Section 30 did not modify, alter, or nullify the requirement in Rev. Stat. Section 2169 that a potential citizen be white or of African descent.

> "Section 30 of the law of 1906, which provides for the naturalization of those persons, not citizens, who 'owe permanent allegiance to the United States,' has given rise to conflicting interpretations by the lower federal courts and, it appears, has thus far been the object of a dictum only by the United States Supreme Court.
>
> "Van Dyne, in his treatise on Naturalization which was published in 1907, took the view that section 30 authorized the naturalization of citizens of Porto Rico and citizens of the Philippine Islands. In discussing the reasons for this provision he cited the case of Gonzales v. Williams, which held that citizens of Porto Rico and of the Philippine Islands, while not citizens of the United States, were not aliens and hence could not be naturalized because the naturalization laws applied only to aliens; and, furthermore, the naturalization laws required a renunciation of former allegiance, which would be impossible, since the citizens of these islands owed allegiance to the United States. It was under these circumstances, says Van Dyne, that Congress provided for their admission to citizenship by section 30 of the Act of 1906.
>
> "The courts, however, have been divided in their interpretation as to the effect of this particular section of the law. In 1912, the District Court for the Eastern District of Pennsylvania, in denying citizenship to a Filipino, interpreted section 30 as being limited by the provision of the naturalization laws which permits only free whites or persons of African descent to be naturalized. They considered that the whole body of naturalization laws was limited by the latter provision, and that section 30 was not excepted. They

took the view that 'Congress did not intend to extend the privilege of citizenship to those who had become citizens of the Philippine Islands under the Act of 1902, unless they were free white persons or of African descent.'

"On the other hand, the District Court for the District of Maryland in 1915 admitted to citizenship under section 30, a native of Porto Rico and in 1917 the District Court for the Northern District of California admitted a Filipino to citizenship by virtue of this section. In the latter case the court took the view that section 30 of the law of 1906 was created for the express benefit of Filipinos and Porto Ricans, as shown from the debates in Congress, and that distinction of color did not apply in these cases.

"Finally, in a dictum in the case of Toyota v. United States, decided in 1925 by the United States Supreme Court, Mr. Justice Butler declared that it was doubtful whether section 30 of the act of 1906 extended the privilege of naturalization to all citizens of the Philippine Islands. He considered that the class eligible under section 30 was limited to persons of the white race or of African descent. Since section 30 provided that 'all the applicable provisions of the naturalization laws shall apply' to the admission to citizenship of those who 'owe permanent allegiance,' he considered that the limitation on race and color was not removed.

"This dictum was cited in 1927 in the case of United States v. Javier by the Court of Appeals for the District of Columbia as a basis for canceling a certificate of naturalization of a Filipino on the ground that he was not of a class eligible for naturalization." Gettys, The Law of Citizenship in the United States, pages 67-69.

In other words, my research indicates that prior to 1940, for various reasons, Mrs. Kneubuhl could not have legally become a citizen of the United States. While there are various routes Mrs. Kneubuhl may have been able to take to become a U.S. citizen, those routes were blocked by Rev. Stat. § 2169 which stated that a potential citizen must be white or of African nativity.

However, with the enactment of the Naturalization Act of 1940, the racial barriers to naturalization began to dissipate. In Section 303 of the Nationality Act of 1940, descendants of races indigenous to the Western Hemisphere were allowed to be naturalized along with whites and citizens of African nativity. More importantly, Section 303 was amended on July 2, 1946 by Pub. L. No. 79-483 which stated:

> "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 303 of the Nationality Act of 1940, as amended (54 Stat. 1140; 57 Stat. 601; 8 U.S.C. Supp. 703), be amended to read as follows:
>
> "'Sec. 303 (a) The right to become a naturalized citizen under the provisions of this Act shall extend only to--
>
> "'(1) white persons, persons of African nativity or descent, and persons who are descendants of races indigenous to the continents of North or South America or adjacent islands and Filipino persons or persons of Filipino descent;
>
> "'(2) persons who possess, either singly or in combination, a preponderance of blood of one or more of the classes specified in clause (1);
>
> "'(3) Chinese persons and persons of Chinese descent, and persons of races indigenous to India; and
>
> "'(4) persons who possess, either singly or in combination, a preponderance of blood of one or more of the classes specified in clause (3) or, either singly or in combination, as much as one-half blood of those classes and some additional blood of one of the classes specified in clause (1).
>
> "'(b) Nothing in the preceding subsection shall prevent the naturalization of former citizens of the United States who are otherwise eligible to naturalization under the provisions of section 317.'"

An examination of Section 303(a)(4) of the Nationality Act of 1940 (as amended) reveals that Mrs. Kneubuhl would have no trouble fitting within the category of those

individuals who are allowed to be naturalized under the Nationality Act of 1940. Although not possessing much ethnological knowledge concerning racial classes, it would seem obvious that Mrs. Kneubuhl would be eligible for naturalization as a result of being half white (due to the fact that her father was white). Subsequently, given Mrs. Kneubuhl's racial background and heritage, the conclusion can be reached that she was eligible for naturalization perhaps after 1940 (as a national whose race was indigenous to the Western Hemisphere) and definitely after 1946 (as a national who was half white under Section 303(a)(4) of the Nationality Act of 1940 as amended by Pub. L. 79-483, July 2, 1946).

Having stated that Mrs. Kneubuhl finally became racially able to become naturalized in 1946, the logical question is how did Mrs. Kneubuhl become naturalized? More particularly, is it reasonable to assume that she became naturalized solely by virtue of birth or residence in a United States possession?

An examination of the Nationality Act of 1940 and the facts as given reveals that the only way Mrs. Kneubuhl could have become a U.S. citizen in 1949 is solely by virtue of her residence in a U.S. possession. Section 307 of the Nationality Act of 1940 had a residency requirement as follows:

> "Sec. 307. (a) No person, except as hereinafter provided in this Act, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing petition for naturalization has resided continuously within the United States for at least five years and within the State in which the petitioner resided at the time of filing the petition for at least six months, (2) has resided continuously within the United States from the date of the peti-

tion up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States."

Moreover, the applicant for naturalization has to prove that he satisfied the statutory residence requirement in the following manner:

"Sec. 309. (a) As to each period and place of residence in the State in which the petitioner resides at the time of filing the petition, during the entire period of at least six months immediately preceding the date of filing the petition, there shall be included in the petition the affidavits of at least two credible witnesses, citizens of the United States, stating that each has personally known the petitioner to have been a resident at such place for such period, and that the petitioner is and during all such period has been a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

"(b) At the hearing on the petition, residence in the State in which the petitioner resides at the time of filing the petition, for at least six months immeidately preceding the date of filing the petition, and the other qualifications required by subsection (a) of section 307 during such residence shall be proved by the oral testimony of at least two credible witnesses, citizens of the United States, in addition to the affidavits required by subsection (a) of this section to be included in the petition. At the hearing, residence within the United States during the five-year period, but outside the State, or within the State but prior to the six months immediately preceding the date of filing the petition, and the other qualifications required by subsection (a) of section 307 during such period at such places, shall be proved either by depositions taken in accordance with subsection (e) of section 327, or oral testimony, of at least two such witnesses for each place of residence."

Section 309, Nationality Act of 1940, ch. 876, 54 Stat. 1137.

Thus, summarizing the residence requirements of the Nationality Act of 1940, Mrs. Kneubuhl normally would have to prove that she had resided in the U.S. (the U.S. being defined in the Act as the continental United States, Alaska, Hawaii, Puerto Rico and the Virgin Islands) for five years preceding her petition for naturalization; that she resided within the state (the state being defined to include Alaska, Hawaii, Puerto Rico and the Virgin Islands) where the petitioner filed the petition for six months prior to the filing of the petition; that she resided continuously in the U.S. from the date of the petition up to the time of admission to citizenship.

An examination of our facts situation reveals that Mrs. Kneubuhl never spent more than a brief amount of time in the United States, certainly nothing approaching five years or even six months continuously. Hence, it would seem that Mrs. Kneubuhl would be unable to acquire United States citizenship because of the residence requirement imposed by the Nationality Act of 1940.

However, an examination of the Nationality Act reveals there is one way Mrs. Kneubuhl may have been naturalized in spite of the residency requirement. In other words, the residence requirement may have been satisfied by virtue of the fact that Mrs. Kneubuhl was a resident of a United States possession.

Section 321 of the Nationality Act of 1940 states:

> "Sec. 321. A person not a citizen who owes permanent allegiance to the United States, and who is otherwise qualified may, if he becomes a resident of any States, be naturalized upon compliance with the requirements of this Act, except that in petitions for naturalization filed under the provisions of this section, residence within the United States within the meaning of this Act shall include residence within any of the outlying possessions of the United States."

Those individuals who owe permanent allegiance to the U.S., and can take advantage of Section 321, are called nationals:

> "(a) The term 'national' means a person owing permanent allegiance to a state."

Further, nationals are defined as those people who are born in an outlying possession of the U.S.

> "Sec. 204. Unless otherwise provided in section 201, the following shall be nationals, but not citizens, of the United States at birth:
>
> "(a) A person born in an outlying possession of the United States of parents one of whom is a national, but not a citizen, of the United States;"

Finally, an outlying possession is defined as all the territory which the U.S. exercises sovereign power over. In 1940, the U.S. exercised the sovereignty over American Samoa.

> "(e) The term 'outlying possessions' means all territory, other than as specified in subsection (d), over which the United States exercises rights of sovereignty, except the Canal Zone."

To sum up this string of definitions, Mrs. Kneubuhl, by reason of her being an indigenous inhabitant of American Samoa at the time of its acquisition by the United States, is a national entitled to take advantage of Section 321 of the Nationality Act of 1940. In other words, on any petition Mrs. Kneubuhl filed for naturalization she could use her

residency in an outlying possession, namely American Samoa, to satisfy the residency requirement of Section 307.

Having ascertained that Mrs. Kneubuhl is a national within the purview of Section 321 of the Nationality Act of 1940, the only way Mrs. Kneubuhl could have become a citizen of the U.S., assuming the facts as given are correct, is under Section 311 of the Nationality Act of 1940. Section 311 states:

> "Sec. 311. A person who upon the effective date of this section is married to or thereafter marries a citizen of the United States, or whose spouse is naturalized after the effective date of this section, if such person shall have resided in the United States in marital union with the United States citizen spouse for at least one year immediately preceding the filing of the petition for naturalization, may be naturalized after the effective date of this section upon compliance with all requirements of the naturalization laws with the following exceptions:
>
> "(a) No declaration of intention shall be required.
>
> "(b) The petitioner shall have resided continuously in the United States for at least two years immediately preceding the filing of the petition in lieu of the five-year period of residence within the United States and the six months' period of residence within the State where the naturalization court is held."

My interpretation of this Section is that if an individual can prove that he or she was in a state of marriage on the effective date of the Act (January 14, 1941) with a U.S. citizen, that person can use Section 311 to become a citizen. I do not feel this Section (although it is subject to interpretation) by using language as "a person who upon

the effective date of this Section is married to or thereafter marries a citizen of the U.S.," refers only to individuals who had the marriage ceremony performed on or after the effective date of the Act. I feel this language also refers to those individuals whoare married, i.e., in a state of marriage, on this particular date.

Further, although I have discovered no cases which directly interpret the language in this section of the Nationality Act of 1940, I have one Supreme Court case which states:

> "The case turns upon the construction given to the 2d section of the Act of Congress of February 10th, 1855, which declares 'that any woman, who might lawfully be naturalized under the existing laws, married, or who shall be married to a citizen of the United States, shall be deemed and taken to be a citizen.' 10 Stat. at L. 604.
>
> "As we construe this Act, it confers the privileges of citizenship upon women married to citizens of the United States, if they are of the class of persons for whose naturalization the previous Acts of Congress provides. The terms 'married,' or 'who shall be married,' do not refer, in our judgment, to the time when the ceremony of marriage is celebrated, but to a state of marriage. They mean that, whenever a woman, who under previous Acts might be naturalized, is in a state of marriage to a citizen, whether his citizenship existed at the passage of the Act or subsequently, or before or after the marriage, she becomes, by that fact, a citizen also. His citizenship, whenever it exists, confers, under the Act, citizenship upon her. The construction which would restrict the Act to women whose husbands, at the time of marriage, are citizens, would exclude far the greater number, for whose benefit, as we think, the Act was intended. Its object, in our opinion, was to allow her citizenship to follow that of her husband, without the necessity of any application for naturalization on her part; and, if this was the object, there is no reason for the restriction suggested."
>
> (Kelly v. Owen, 74 U.S. 496, 7 Wall 496, 19 L. Ed. 283 (1869).)

If my interpretation of §311 is correct, Mrs. Kneubuhl would have been able to easily prove that she was married to an American citizen on the effective date of the Act and that she resided in the U.S. in marital union with the U.S. citizen spouse for one year immediately prior to the filing of the petition. Of course residing within the U.S. meant residing in any of the outlying possessions of the U.S. and since Mrs. Kneubuhl is a national, or rather a person not a citizen who owes permanent allegiance to the U.S., she would have satisfied this requirement. Have satisfied these requirements, Mrs. Kneubuhl under §311 of the Act, would not have been required to file a declaration of intention, and Mrs. Kneubuhl would only have had to prove that she resided in the U.S. for two years (those two years of residency also being satisfied by residence in American Samoa). Finally, and more importantly, the requirement of continuous residence for six months in the state where the petition was filed would also be waived.

Hence, the most likely scenario for Mrs. Kneubuhl obtaining her citizenship would be as follows: Mrs. Kneubuhl as a half-white national Samoan would file a petition with the court, after 1940, stating that she was married to a U.S. citizen, on the effective date of the Act, had resided in marital union for one year with her husband in the U.S. (American Samoa) and had lived in the U.S. (American Samoa)

for at least two years. The court, upon sufficient verification of these facts, would then grant her petition for naturalization.

Thus, the argument can be made that Mrs. Kneubuhl like Mr. Corn in the Technical Advice Memorandum prepared by the IRS, became a citizen solely by virtue of being born or a resident of a U.S. possession. It is true that the marriage to an American citizen shortened, and even eliminated some of the normal residency requirements. However, assuming the facts are correct, Mrs. Kneubuhl would not have been able to satisfy the minimal residence requirements for a spouse if she had not been a national and resident of a U.S. possession.

To paraphrase the language in the Internal Revenue Service's Technical Advice Memorandum, the argument can be made that Mrs. Kneubuhl's marriage to an American citizen only shortened the length of the residence requirement from five to two years and omitted the residency requirement that an individual had to reside in a state for six months prior to the filing of petition. The marriage to the U.S. citizen then, was not actually the basis for the naturalization per se. The facts as presented show that Mrs. Kneubuhl met the residency requirement for citizenship solely by reason of her residence on American Samoa, an outlying possession of the United States.

On the other hand, assuming my interpretation of Section 311 of the Nationality Act of 1940 is incorrect, there is another way Mrs. Kneubuhl may have acquired her United States citizenship. If Mrs. Kneubuhl were not able to take advantage of Section 311, Mrs. Kneubuhl may have gone through the normal procedure required of an applicant who attempts to obtain naturalization via the Nationality Act of 1940. In other words, Mrs. Kneubuhl may have filed a Declaration of Intention to become a citizen in a state or federal court at least two years prior to the filing of her Petition for Naturalization. (See Section 331 of the Nationality Act of 1940.) Two years after the filing of the Declaration of Intention and prior to seven years after the filing of the Declaration of Intention, Mrs. Kneubuhl may have gone to the state court or federal district court to file her Petition of Naturalization in order to obtain her naturalization as a United States citizen.

However, since Mrs. Kneubuhl would not be entitled to the benefits of Section 311 of the Nationality Act of 1940, Mr. Kneubuhl would have had to prove three things to become naturalized under the Nationality Act of 1940: First, Mrs. Kneubuhl would have had to prove that she resided in the United States at least five years prior to the filing of her Petition of Naturalization. Secondly, she would have

had to prove that she resided in the state in which the petition was filed for at least six months prior to the filing of her petition. Third and finally, she would have had to prove that she resided continuously in the United States from the date of her naturalization petition up to the time of her admission to U.S. citizenship.

Based on the facts as given, no problem is presented by the five year residency requirement in the United States or the continuous residency requirement in the United States until citizenship is confirmed. No problems are presented by those requirements because Mrs. Kneubuhl fell within that class of individuals who were allowed to take advantage of Section 321 of the Nationality Act of 1940. In other words, residency within the United States is defined to include, for Mrs. Kneubuhl, residency in American Samoa.

However, the facts in this case indicate that Mrs. Kneubuhl may not have resided in a state continuously for six months prior to the filing of her Petition for Naturalization. Hence, there may be a problem in proving that Mrs. Kneubuhl was legally naturalized under Section 307 of the Nationality Act of 1940 unless she can prove that she resided continuously in a state six months prior to the filing of her petition.

If Mrs. Kneubuhl is able to prove that she resided in a state for six months and was naturalized

under the provisions of Section 307 (rather than Section 311) of the Nationality Act of 1940 a strong argument can still be made that Mrs. Kneubuhl became a citizen solely by virtue of her residency in the United States possession. In other words, although the six month residency requirement would be satisfied by her residence in a state, the five years and continuous residency requirement in the United States would be satisfied via Section 321 of the Nationality Act of 1940; by residence in a U.S. possession. Therefore, the same argument can be made that although Mrs. Kneubuhl satisfied the six month residence requirement by residence in a state, the only or sole way she was able to become a citizen of the United States was by residence in a United States possession.

II. DOCUMENTATION OF MRS. KNEUBUHL'S ACQUISITION OF CITIZENSHIP SHOULD BE DISPOSITIVE OF THE ISSUE OF HOW SHE ACQUIRED HER CITIZENSHIP.

A. Introduction

Throughout this memo it has been assumed that Mrs. Kneubuhl is in fact a United States citizen. Furthermore, it has also been assumed that she legally obtained her citizenship sometime after 1940. However, at the current

time there is no documentary proof to indicate that Mrs. Kneubuhl is in fact a United States citizen. If any documents could be found which would prove that Mrs. Kneubuhl is a United States citizen it would be very simple to determine how Mrs. Kneubuhl acquired that citizenship status. Thus, this section represents an attempt to discuss how the discovery of certain documents will affect my current hypothesis that Mrs. Kneubuhl obtained her citizenship solely by virtue of being a resident of a United States possession.

B. Certificate of Naturalization

Section 336 of the Nationality Act of 1940 states:

> "Sec. 336. A person, admitted to citizenship by a naturalization court in conformity with the provisions of this Act, shall be entitled upon such admission to receive from the clerk of such court a certificate of naturalization, which shall contain substantially the following information: number of petition for naturalization; number of certificate of naturalization; date of naturalization; name, signature, place of residence, autographed photographed and personal description of the naturalized person, including age, sex, marital status, and country of former nationality; title, venue, and location of the naturalization court; statement that the court, having found that the petitioner intends to reside permanently in the United States, had complied in all respects with all of the applicable provisions of the naturalization laws of the United States, and was entitled to be admitted a citizen of the United States of America, thereupon ordered that the petitioner be admitted as a citizen of the United States of America; attestation of the clerk of the naturalization court; and seal of the court."

Obviously if the Certificate of Naturalization can be discovered it will be a very simple matter to discover how Mrs. Kneubuhl acquired her citizenship. The Certificate of Naturalization should have all the pertinent facts necessary to ascertain how Mrs. Kneubuhl qualified for United States citizenship. Further, based on my hypothesis Mrs. Kneubuhl could only become naturalized solely by virtue of being a resident in a U.S. possession. Thus, if the Certificate of Naturalization is found, it should either prove or disprove this theory. If nothing else, since the Certificate of Naturalization is judicially granted it would not only prove that Mrs. Kneubuhl is a U.S. citizen, but it would also prove that she was naturalized by a court and did not acquire citizenship automatically under Rev. Stat. § 2169 upon her marriage to a U.S. citizen in 1914.

C. Certificate of Citizenship

Section 339 of the Nationality Act of 1940 states:

> "A person who claims to have derived United States citizenship through the naturalization of a parent or through the naturalization or citizenship of a spouse may apply to the Commissioner for a certificate of citizenship. Upon proof to the satisfaction of the Commissioner that the applicant is a citizen, and that the applicant's alleged citizenship was derived as claimed, and upon taking and subscribing before a member of the Service within the United States to the oath of allegiance required by this Act of a petitioner for naturalization, such individual shall be furnished by the

Commissioner with a certificate of citizenship, but only if such individual is at the time within the United States."

This section of the Nationality Act of 1940 indicates that a person may apply to the Commissioner of the Immigration and Naturalization Service for a Certificate of Citizenship. If Mrs. Kneubuhl applied for and received one of the certificates it obviously indicates that she claimed her citizenship via marriage to a U.S. citizen. In other words, an analysis of Section 339 reveals that the only way Mrs. Kneubuhl may have quired a Certificate of Citizenship is via the claim that she acquired derivative citzenship through her spouse. It would have been impossible for her to claim derivative citizenship through her parents since neither was an U.S. citizen.

Hence, if Mrs. Kneubuhl has a Certificate of Citizenship rather than a Certificate of Naturalization this would indicate that she obtained her citizenship status not by virtue of being a resident of a possession, but by virtue of marrying a U.S. citizen. If Mrs. Kneubuhl has a Certificate of Citizenship then, it is highly unlikely that she falls within that class of individuals described in the Technical Advise Memorandum released by the Internal Revenue Service.

Moreover, one caveat must be pointed out at this point. If Mrs. Kneubuhl has a Certificate of Citizenship, the date on the Certificate of Citizenship should be examined closely. It may be possible that she obtained her Certificate of Citizenship prior to the time she was racially able to become naturalized under the Nationality Act of 1940. In that case, she may have become a U.S. citizen illegally and hence, additional research may be desired to assess the legal status of a Certificate of Citizenship illegally granted.

D. Passport

Finally, there is a possibility that no documents may be found which indicate that Mrs. Kneubuhl is in fact an American citizen. If this is the case, there would be grave doubt in my mind as to whether Mrs. Kneubuhl is a citizen at all.

The fact that we know that Mrs. Kneubuhl has a passport which states that she is a U.S. citizen, is not indicative of actual citizenship nor is it judicially recognized as bestowing citizenship upon the possessor of the passport. Hence, we may be faced with the possibility that the entire issue presented by this memo is moot because Mrs. Kneubuhl's estate is not subject to estate tax because she is not a citizen of the United States and only a citizen or native of American Samoa.

BIBLIOGRAPHY

BOOKS

Van Dyne, Frederick, Citizenship of the United States (Lawyers' Co-operative Publishing Co., Rochester, N.Y.: 1904)

Call No. KB24
C6V2
S

Van Dyne, Frederick, A Treatise on the Law of Naturalization (The Law Reporter Printing Company, Washington D.C.: 1907)

Call No. KB24
C6VT
S

Gettys, Luella, The Law of Citizenship in the United States (University of Chicago Press, Chicago, Ill.: 1934)

Call No. KB24
C6G4
S

Hackworth, Green, Vol. III Digest of International Law (U.S. Govt. Printing Office, Department of State Publication 1708, Washington: 1942)

Call No.: KJ409
H11
C2

Udell, Gilman G., Naturalization Laws (U.S. Govt. Printing Office, Washington: 1976)

DEC 2 2 1976

memorandum

[illegible] Director

o: Office of International Operations
Att'n: Chief, Audit Division

n: Chief, Estate and Gift Tax Branch
Individual Tax Division
T:I:EG:2-SRG

t: Estate of Charles L. Corn
Date of Death - April 17, 1973

[illegible]

Mr. Nicholas: This might be of help in Mr. Krishell problem re American Samoa

[X] Attached is our memorandum in response to your request for technical advice in the case described above.

[ ] We have considered the case described above in accordance with the procedures set forth in IRM 45(10)2.24:(2)(c). A memorandum setting forth our decision is attached.

OFFICE OF INT. OPERS.
ESTATE & GIFT TAX SECTION
RECEIVED
JAN 4 1977
A.M.

[ ] Case returned for further development.

Remarks:

(Signed) Raymond G. Veltri
Raymond G. Veltri

Attachments:
Copy of this memorandum
Original and 2 copies of Technical Advice Memorandum
[illegible]

Copy of each memorandum to ARC (Audit) Region
Copy of each memorandum to CP:A:

M-6000 (3-73)

Internal Revenue Service

INTERNAL REVENUE SERVICE

NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

Director
Office of International Operations

Taxpayer's Name: Estate of Charles L. Corn

Taxpayer's Address: Laurence Vogel, Esq.
Greenbaum, Wolff & Ernst
437 Madison Ave.
New York, N.Y. 10022

Taxpayer's Identification No. - SSAN 586-01-5755

Date of Death: April 17, 1973

Conference Held: October 4, 1976

ISSUE

Was an individual who resided on the island of Guam from 1948 until his death in 1973, and who became a naturalized citizen on December 16, 1954, as the result of his marriage to a United States citizen, a citizen of the United States for purposes of the Estate Tax under section 2208 of the Internal Revenue Code of 1954?

FACTS

Charles L. Corn was born in China in 1899. He married Esperange Elwick Corn, a Phillipine national, on March 22, 1926, at Baclaran, Rizal, Phillipines. In 1948 he moved from the Phillipines to Guam.

Dr. Corn's wife became a naturalized United States citizen in San Francisco on August 16, 1950. Mr. Corn became a naturalized citizen on November 16, 1954 on Guam. His right to citizenship was based upon section 319(a) of the Immigration and Naturalization Act of 1952, title 8 United States 1430(a), which provides for the naturalization of aliens married to United States citizens.

Dr. Corn died April 17, 1973. He had maintained his residence on Guam from 1948 until the time of his death.

Office of International Operations

THE UNITED STATES ESTATE TAX

Section 2001 of the Internal Revenue Code of 1954 imposes a tax on the transfer of a taxable estate as defined in section 2051, of every decedent who dies after August 16, 1954, and who was a citizen or resident of the United States at the time of death. Act of August 16, 1954, ch. 736, 68A Stat. 373. The Technical Amendments Act of 1958 added the following provision to the Code concerning the estates of citizens:

> SEC. 102. APPLICATION OF ESTATE AND GIFT TAXES TO POSSESSIONS.
>
> (a) Estate Tax. - Subchapter C of Chapter 11 (relating to miscellaneous estate tax provisions) is amended by adding at the end thereof the following new section:
>
> SEC. 2208. CERTAIN RESIDENTS OF POSSESSIONS CONSIDERED CITIZENS OF THE UNITED STATES
>
> "A decedent who was a citizen of the United States and a resident of a possession thereof at the time of his death shall for purposes of the tax imposed by this chapter, be considered a 'citizen' of the United States within the meaning of that term wherever used in this title unless he acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States."
> * * * *
> Pub. L. 85-866, title I, sec 102(a) September 2, 1958, 72 Stat. 1674; sec 2208, Internal Revenue Code of 1954.

This provision was not included in the original bill introduced in the House of Representatives or as reported by the Senate Finance Committee. 1 J. Mertens, The Law of Federal Gift and Estate Taxation 82, n. 67 (1959).

Office of International Operations

It was introduced as an amendment on the floor of the Senate with the explanation it was recommended by the Treasury Department to close a "loophole" with respect to inheritance taxes due in United States possessions. 104 Cong. Rec. 17105 (1958) (Remarks of Senator Williams). As justification, a memorandum from the Treasury Department was placed in the Congressional Record reading, in part, as follows:

> * * * * In the Estate of Albert D. Smallwood, (11 T.C. 740 (1948)), the Tax Court held that the estate of a citizen of the United States who resided and acquired citizenship in Puerto Rico was not subject to tax as an estate of a citizen of the United States. This decision was followed by the Tax Court in the Estate of Arthur L. Fairchild (24 T.C. 408 (1955)), in which it was held that the estate of a citizen of the United States resident in the Virgin Islands was not subject to the estate tax. It has also been held in Estate of Rivera (19 T.C. 271, aff'd 214 F. 2d 60 (2d Cir. 1954)), that the estate of a citizen of Puerto Rico who was not otherwise a citizen of the United States was not subject to estate tax under Section 2101 as a nonresident decedent not a citizen of the United States.
>
> In general, the results reached in the foregoing decisions are based on the theory that the United States does not extend its Federal tax system to possessions unless Congress does so expressly. * * * *
>
> In addition to expanding the scope of the estate and gift taxes to citizens of the United States resident in United States possessions, the bill would also make the estate and gift taxes applicable to citizens of possessions who are not otherwise citizens of the United States. * * * *

Office of International Operations

> Section 1 of the bill amends subchapter C of chapter 11 of the Code by adding new section 2208 thereto. Section 2208 provides that the term "citizen" of the United States wherever used in connection with the estate tax includes every decedent who was a United States citizen resident in a possession of the United States unless he acquired citizenship solely by reason of (1) his being a citizen of a possession of the United States, or (2) birth or residence within a possession of the United States. * * * * Thus, a person who became a United States citizen solely by reason of his being a citizen of Puerto Rico, or solely by reason of his birth or residence within the Virgin Islands, would fall within the classification of a "nonresident not a citizen of the United States" * * * . On the other hand, a United States citizen who moved from the United States to Puerto Rico or the Virgin Islands would never fall into the classification of a "nonresident not a citizen of the United States" merely because of his subsequent residence in the Virgin Islands. Under the provision of section 2001 of the Code, by reason of the addition of section 2208 to the Code, the estate of such latter individual would be taxed in the same manner in which it would have been taxed if he had never left the United States.
> 104 Cong. Rec. 17106.

The amendment originally suggested by the Treasury Department, and which was introduced contemporaneously with the above memorandum, provided not only for the taxation of citizens who moved from the United States to one of its possessions, but also for the taxation of the estates of citizens of the possessions as nonresidents not citizens of the United States. The latter provision, however, was objected to by members of the House and subsequently deleted by the conference committee. This action was explained in Conference Report No. 2632; 85th Cong., 2d Session (1958); 1958-3 C.B. 1188, 1228, as follows:

* * * *

> Under the provisions of this amendment United States citizens who are residents of the possessions and who acquired their United States citizenship completely independently of their connections with the possessions will have their estates taxed in the same manner as estates of citizens of the United States are taxed. The estates of all other residents of the possessions, regardless of citizenship will be taxed in the same manner as the estates of residents not citizens. * * * * For example, a United States citizen who moves from the United States to one of the possessions will continue to be treated for estate and gift tax purposes in the same manner in which he would have been treated if he had remained in the United States. * * * *
>
> The House recedes (from its objection) with a modification that these provisions shall apply only to residents of possessions who acquired their United States citizenship completely independently of their connections with the possessions. With respect to all other residents of possessions, regardless of citizenship, existing law will continue to be applicable. It is recognized that with respect to these other residents of possessions a problem may still remain. However, it was believed that additional time is required for study in this area. * * * *

Two years later, apparently acquiescing to the original recommendation of the Treasury Department, Congress enacted section 2209 of the Code providing that a decedent who was a citizen of the United States and a resident of a possession shall be considered a "nonresident not a citizen of the United States" for purposes of the estate tax if such decedent acquired United States citizenship "solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States. Pub. L. 86-779, sec. 4(b)(1), September 14, 1960, 74 Stat. 999. Referring again to the

Smallwood, Fairchild, and Rivera cases, supra, House Report No. 1131 explained the purpose of this legislation as follows:

* * * *

> As a result of these decisions, Congress last year in the Technical Amendments Act of 1958 made the estate and gift taxes specifically applicable in the case of citizens of the United States who are residents of a possession but only if the citizen did not become a citizen of the United States solely by being a citizen of a possession or solely by reason of his birth within a possession of the United States or solely by reason of his residence within the possession. (Hereafter those who attained U.S. citizenship solely as a result of one of these factors will for convenience be referred to as being a citizen of a U.S. possession.) With respect to these citizens of the United States but whose citizenship was not derived from citizenship in a U.S. possession, the estate and gift tax provisions were made applicable in the same manner as is generally true in the case of citizens of the United States. * * * *
>
> Your committee in this bill recommends that these citizens (whose citizenship was derived solely from citizenship, etc., in a possession) be subject to the estate and gift tax imposed by the United States, in general, to the same extent as in the case of nonresidents not citizens of the United States. * * * *

House Report No. 1131, 86th Cong., 2d Sess. (1959), 1960-2 C.B. 811, 815; see also Senate Report No. 1767, 86th Cong. 2d Sess. (1960), 1960-2 C.B. 829, 833.

There have been no court decisions or revenue rulings interpreting either section 2208 or 2209 with respect to the issue presented by the instant case. One ruling has declined to literally apply a portion of section 2208 not relevant to the issue herein. Rev. Rul. 74-25, 1974-1 C.B. 284. The analysis of law in that ruling is inapposite to the present case.

The term "United States," as used in the above statute, refers to the continental United States, Alaska, Hawaii, Puerto Rico, Guam and the Virgin Islands. 8 U.S.C. sec. 1101(38). The term "residence" means "principal, actual dwelling place in fact, without regard to intent." 8 U.S.C. sec. 1101(33).

We have been unable to find any court opinions or other sources in the body of immigration and naturalization law which would assist in the resolution of the estate tax question herein.

will be subject to the estate tax under section 2001 unless the decedent acquired his citizenship solely by reason of his residence in such possession. However, examination of this statute in conjunction with the immigration and naturalization law, as well as international law, casts some doubt on the propriety of applying the literal meaning thereof.

One question which may be raised is the meaning of the term "possession". The Internal Revenue Code contains no definition. Under one view of international law, the term "possession" refers to the non-administered territories under United States sovereignty which have no indigenous populations and no established governments, e.g., Midway Island, Swan Island, and the Howland Islands. On the other hand, Guam and the Virgin Islands would be classified as unincorporated territories. Puerto Rico would be classified a commonwealth. 2. M. Whiteman, Digest of International Law 1321-1322 (1963). Although, for certain income tax purposes Guam has been referred to as a "possession" and considered to have the same tax status as the Virgin Islands and Puerto Rico. Rev. Rul. 1951-8-13571, 1951-1 C.B. 59; see also 1 J. Mertens, The Law of Federal Gift and Estate Taxation S2-83, n. 68 (1959).

Examination of the legislative history of section 2208, supra, reveals that the term possession was not used in the international law sense. It is evident from both the Treasury memorandum and the Conference Report that the legislation was concerned with a citizen of one of the several states avoiding tax by moving to an area under United States control but outside the states. The term "possession" was used in a general sense to distinguish between the states and the various territories, possessions, etc., under United States domination. This conclusion is supported by the grouping of the Commonwealth of Puerto Rico and the Virgin Islands together in the legislative history when, in fact, they have quite distinct differences in their status. For this reason, Guam will be considered a possession for purposes of the Federal estate tax.

The second question is the interpretation of the phrase granting exemptions to individuals who acquired their citizenship "solely" by reason of residence within a possession of the United States. A strict reading of this language results in denial of the exemption to individuals who acquired United States citizenship as the result of any other factor, whether alone or in conjunction with residence in a possession.

In this case, the decedent became a United States citizen in 1954 under section 319(a) of the Immigration and Naturalization Act of 1952. The law required him to meet all the general requirements for naturalization with but one exception. Instead of the requirement for five years residence in the United States, since he was married to a United States citizen, only three years were required. The marriage to a United States citizen then, was not actually the basis for naturalization, per se.

The facts presented show the decedent met the residence requirements for citizenship solely by reason of his residence on Guam, a possession of the United States. Based upon the reasoning above, since the decedent died a resident of a possession, section 2208 exempts his estate from imposition of the estate tax under section 2001 as a citizen of the United States. Instead, his estate shall be subject to the estate tax under section 2107 as a nonresident not a citizen as required by section 2209 of the Code.

CONCLUSIONS

1. Based upon the facts presented, Charles L. Corn was not a citizen of the United States at the time of his death for purposes of the Estate Tax under section 2208 of the Internal Revenue Code of 1954.

2. The estate of Charles L. Corn shall be subject to the estate tax under section 2101 as an estate of a nonresident not a citizen as required by section 2209 of the Code.

--END--