

Part III - Administrative, Procedural, and Miscellaneous

Trusts Not Considered Individuals for Purposes of Section 935

Notice 2000-61

The Internal Revenue Service and the Treasury Department have become aware of certain types of transactions that are being marketed to taxpayers for the avoidance of federal income taxes. The promoters of these transactions claim that section 935 applies to a trust as part of a scheme in which the trust seeks effectively to avoid both U.S. and Guamanian tax liability. As explained below, section 935 applies to individuals only and not to trusts. These transactions may also be subject to challenge on other grounds. In addition, such transactions are hereby designated as “listed transactions” for purposes of sections 6011, 6111 and 6112.

Prior to 1973, U.S. citizens who were residents of Guam, and whose citizen status did not derive from birth or naturalization in Guam, were required to file both U.S. and Guamanian tax returns. H.R. Rep. No. 92-1479, 92d Cong., 2d Sess. 1 (1972); see also Section 31 of the Organic Act of Guam, 48 U.S.C. § 1421 *et seq.* In addition, most other individuals who derived income from both Guam and the United States had to file tax returns with both jurisdictions. *Id.*

Section 935 was enacted, effective for tax years beginning after 1972, to permit such individuals to file a single income tax return, in Guam, thus eliminating the administrative burdens associated with the filing of two income tax returns. It was recognized that the foreign tax credit generally eliminated the tax liability to one of the jurisdictions and, therefore, that section 935 generally would not affect the amount of tax ultimately due. See H.R. Rep. No. 92-1479, 92d Cong., 2d Sess. 1 (1972). Section 935 was repealed by P.L. 99-514, sec. 1272(d)(2) (1986), but the repeal takes effect only if (and for so long as) an implementing agreement under P.L. 99-514, section 1271, is in force between the United States and Guam. No such implementing agreement is in force, and thus section 935 remains in effect.

The single filing rule contained in section 935 applies solely to individuals who are resident in Guam, individuals who are citizens of Guam and are not otherwise citizens of the United States, individuals who are U.S. citizens or residents and have income derived from Guam, and individuals who file joint returns with any of these persons.

Nothing in the language of section 935, its legislative history, or the policy behind its enactment indicates that a trust is to be considered an individual for purposes of section 935. The fact that under section 641(b) the taxable income of a trust is generally determined in the same manner as the taxable income of an individual has no bearing on whether a trust is an individual for purposes of section 935. Section 935 does not

relieve a trust from any obligation it may have to file an income tax return for the taxable year with the United States and to pay to the United States any tax due.

Transactions in which it is claimed that section 935 applies to a trust as part of a scheme in which the trust seeks effectively to avoid both U.S. and Guamanian tax liability may also be subject to challenge on other grounds.

The Service may impose penalties on participants in transactions subject to this Notice, or, as applicable, on persons who participate in the promotion or reporting of these transactions, including the accuracy-related penalty under section 6662, the return preparer penalty under section 6694, the promoter penalty under section 6700, and the aiding and abetting penalty under section 6701. Failure to file penalties under section 6651 on the trust may also be appropriate.

In addition, transactions subject to this Notice are hereby identified as “listed transactions” for the purposes of § 1.6011-4T(b)(2) of the Temporary Income Tax Regulations, to the extent applicable, and § 301.6111-2T(b)(2) of the Temporary Procedure and Administration Regulations. See also § 301.6112-1T, A-4. It should be noted that independent of their classification as “listed transactions” for purposes of §§ 1.6011-4T(b)(2) and 301.6111-2T(b)(2), such transactions may already be subject to the tax shelter registration and list maintenance requirements of sections 6111 and 6112 under the regulations issued in February 2000 (§§ 301.6111-2T and 301.6112-1T, A-4). Persons required to register these tax shelters who have failed to register the shelters may be subject to the penalty under section 6707(a) and to the penalty under section 6708(a) if the requirements of section 6112 are not satisfied.

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