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April 26, 1974

MEMORANDUM FOR NOEL KRAMER

SUBJECT: Applicability of Federal Income Tax Laws in the Marianas

Herman Marcuse this morning raised a question concerning the effect of Section I(D)(1) of the last Joint Communique. That Section, like Section 601 of the Commonwealth Agreement, provides that persons who become citizens of the United States "pursuant to" the Agreement will obtain certain favorable tax treatment. Marcuse asked if this excluded those persons who are already U.S. citizens in the Marianas. He pointed out that there are a number of U.S. citizens who are presently in the Marianas who could be expected to stay there under a new political status.

One cannot answer Marcuse's question from the Joint Communique alone, because the citizenship section of the Communique is too vague to determine who will become U.S. citizens pursuant to the Status Agreement. But both our version of the Commonwealth Agreement (what is now Section 301) and the U.S. Covenant (Section 103(a) of the Articles) provide that the citizenship section covers only persons "who are not citizens or nationals of the United States under any other provision of law." Thus a person who is now a citizen of the U.S. and who continues to live in the Marianas after termination will be treated less favorably than a person now a TTPI citizen. I do not suppose this was done purposely. Our only intent, if I remember correctly, was to prevent mainland or other U.S. citizens from moving to the Marianas to obtain tax benefits. Is this correct?

Here is one remedy: Section 301(c) provides that persons who are not TTPI citizens on January 1, 1974, and who are domiciled in the Marianas for five years prior to the effective date of the Section (i.e., termination), and who owe no allegiance to a foreign state, will become citizens of the U.S. We could add a new Section 601(b) to the Commonwealth Agreement which states that persons who meet these requirements and who are otherwise U.S. citizens, will be considered to have become U.S. citizens pursuant to Title III for purposes of Title VI.

for purposes of the whole agreement.

*In definition section
General definition*

Ques - what about ppl who are now citizens of the U.S. Their relatives will not be able to convert their time in the Marianas. "Pursuant to Title III"

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My review of this problem has raised two others:

--Both Section 301(b) and Section 301(c) turn on domicile in the Marianas for five years prior to the effective date of the Citizenship Title--that is, prior to termination. Perhaps this was adequate when we anticipated prompt termination, but in view of the likely date of termination (1980), does the five year figure still serve its purposes?

--Since the Citizenship Title does not become effective until termination, and since the Taxation Title turns on the Citizenship Title, what do we do about taxation in the interim? Plainly we need some drafting which makes the same principles apply before termination as after.


Michael S. Helfer

cc: Howard P. Willens
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