

October 10, 1974

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MEMORANDUM TO MR. WILLENS

Subject: Marianas Territorial Income Tax

Attached is a draft of the provisions for the status agreement relating to the Marianas Territorial Income Tax. The provisions are generally patterned after the Guam provisions which appear at 48 U.S.C. § 1421i.

There is at least one technical question that is not answered by the draft language. Under both the Guam and Virgin Islands territorial tax, the question has arisen whether a stateside U.S. citizen should be treated as a non-resident alien for purposes of the mirror code. If a stateside citizen is treated as a non-resident alien he is not allowed to file a joint return, use the standard deduction, etc. The courts have reached different results in addressing this issue under the Guam and Virgin Island systems. For example, in Great Cruz Bay, Inc. v. Wheatley, 495 F.2d 301 (3d Cir. 1974), the court held that a stateside United States citizen should be treated as a non-resident alien for purposes of the Virgin Island Territorial Tax, so that a Virgin Island corporation was not entitled to elect treatment as a small business corporation under Subchapter S of the Internal Revenue Code because such a corporation is not permitted to have a non-resident alien as a shareholder. The United States as a amicus curiae supported the result

reached by the court. This result was also in accordance with a position taken by the Internal Revenue Service in Revenue Ruling 73-315, which held that:

"From the viewpoint of the Virgin Islands, citizens of the United States residing in the islands must be considered as resident aliens, and citizens of the United States not residing in the Virgin Islands must be treated as non-resident aliens."

However, the opposite result was reached with respect to the Guam Territorial Tax in Manning v. Blaz, 73-1 USTC (9th Cir. 1973) which held that stateside U.S. citizens should be treated as resident aliens for purposes of the Guam code. The decision in the Manning case does not apply for taxable years after the 1972 Guam legislation which treats Guam and the United States as a single taxing jurisdiction with the tax payable to one government or the other based on residency and certain other criteria.

Pending further study of this problem, I have not included an explicit statement in this draft to indicate whether stateside U.S. citizens are intended to be treated as non-resident aliens, although my preliminary thinking is that they probably should be. This point can be clarified in a later draft, or can be treated in the legislative history.

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