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**Department of the Treasury**

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**Person to Contact:**

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**Refer Reply To:**

**CC:DOM:P&SI:4 - PLR-121409-98**

**Date: March 3, 1999**

**Legend:**

Applicant =

Museum =

Loan Agreement =

This is in response to a November 16, 1998 letter from your authorized representative requesting a ruling that works of art you have loaned to a museum located in the United States (Museum) will not be deemed property within the United States under § 2105(c) of the Internal Revenue Code.

The facts, as submitted, indicate that Applicant is not a citizen or resident of the United States. Currently, 31 works of art owned by Applicant are on loan to the Museum. Most of these 31 works of art have been on loan to the Museum since 1996. The Applicant purchased all but two of the 31 works of art in countries outside the United States and imported the works of art into the United States during 1980 for loan to and exhibition at public museums. Applicant purchased two of the works of art in the United States and immediately loaned them to museums after purchase.

The Museum is a public museum. No part of the net earnings of the Museum inures to the benefit of any private stockholder or individual. The Museum uses the loaned works of art solely for display purposes and displays a significant percent of the subject works of art at any given time on a rotating basis. The items not currently on display are stored by the Museum.

The 31 works of art currently on loan to the Museum are subject to a 1996 Loan Agreement between Applicant and the Museum. Under the Loan Agreement, Applicant will leave the works of art with the Museum for at least 18 months from the date the Museum took possession and for an indefinite number of years thereafter. During that 18 months, Applicant had the right to remove up to 10 works of art from the total number loaned to the Museum in 1996. At the end of the 18 months, Applicant and

Applicant's executors have the right to remove any part of the loaned works of art at three months' notice.

It is likely that the works of art will be located at the Museum at the time of Applicant's death. Therefore, you have requested a ruling that, assuming that as of his death (1) Applicant remains a nonresident not a citizen of the United States and (2) the works of art are then on loan to the Museum, subject to the Loan Agreement and the conditions described above, the works of art will not be deemed to be property within the United States under the provisions of § 2105(c) of the Internal Revenue Code and, therefore, will not be includible in Applicant's United States gross estate, if any, for federal estate tax purposes.

Subchapter B of Chapter 11 of the Code (§§ 2101 through 2108) pertains to the taxation of estates of decedents who are nonresidents not citizens of the United States. Section 2101 imposes a tax on the transfer of the taxable estate (determined as provided in § 2106) of every decedent nonresident not a citizen of the United States. Section 2106(a) provides that the value of the taxable estate is determined by deducting various items from the value of that part of the decedent's gross estate which at the time of his or her death is situated in the United States. Section 2103 provides that, for the purpose of the tax imposed by § 2101, the value of the gross estate of every decedent nonresident not a citizen of the United States shall be that part of his or her gross estate which at the time of his or her death is situated in the United States.

Section 20.2104-1(a)(2) of the Estate Tax Regulations provides that property of a nonresident who is not a citizen of the United States at the time of his or her death is considered to be situated in the United States if it is tangible personal property located in the United States, except for certain works of art on loan for exhibition as described in § 20.2105-1(b).

Under § 2105(c) and § 20.2105-1(b), works of art owned by a decedent who was a nonresident not a citizen of the United States shall not be deemed property within the United States if the works of art are (1) imported into the United States solely for exhibition purposes, (2) loaned for that purpose to a public gallery or museum, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and (3) at the time of the death of the owner, on exhibition, or en route to or from exhibition, in the public gallery or museum.

Based upon facts and information submitted, we conclude that section 2105(c) of the Code applies to the 31 works of art. Therefore, we rule that, assuming that as of his death (1) Applicant remains a nonresident not a citizen of the United

States and (2) the works of art are then on loan to the Museum, subject to the Loan Agreement, the works of art will not be deemed to be property within the United States under the provisions of § 2105(c) of the Internal Revenue Code and, therefore, will not be includible in Applicant's United States gross estate, if any, for federal estate tax purposes.

In so concluding, we consider the whole collection to be on exhibition for purposes of section 2105(c) even though only part of the collection will actually be on display to the public at any given time on a rotating basis. Further, we believe that section 2105(c) applies equally to the 2 of the 31 items that were purchased in the United States and immediately loaned to museums after purchase. In this regard, the applicability of section 2105(c) does not depend upon the fulfillment of a useless act such as exporting the 2 items and then importing them back into the United States.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Assistant Chief Counsel  
(Passthroughs and Special  
Industries)

By \_\_\_\_\_  
Katherine A. Mellody  
Assistant to the Chief  
Branch 4

Enclosure  
Copy for section 6110 purposes