By **Mark Powell** & **Jay Riffkin**

Pre-immigration Planning

Transfer strategies for non-U.S. persons

The Sherman Brothers got it right: It's a small world after all. Mobility is a feature of modern life. Parents may stay in their native countries while their children move abroad for study or work. Executives may do tours of duty in foreign countries, where they acquire assets and purchase property. Love may bring citizens of different countries together, requiring careful planning for inevitable inter-spousal transfers. Global financial markets may entice investors to seek direct investment abroad. Changes in international reporting regimes incentivize forum shopping for privacy seekers. Cross-border planning is no longer a rare event, although the complex applicable U.S. rules make it a rarified skill.

That's why it's important to know the U.S. income, gift and estate tax rules as they apply to non-U.S. persons. We'll summarize those rules and describe some common transfer tax planning strategies so planners can confidently advise their clients about basic cross-border planning. Note that for purposes of this article, "person" refers to an individual.

Income Tax

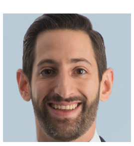
The United States imposes income tax on a worldwide basis on its citizens and residents. It also imposes gift, estate and generation-skipping transfer (GST) taxes on a worldwide basis on transfers by its citizens or residents. A foreign person becomes subject to U.S. income tax when he becomes a U.S. resident and subject to U.S. transfer taxes when he establishes U.S. domicile.[1] The definitions of "residence" and "domicile" are often discussed interchangeably, when in fact they aren't the same.

A non-U.S. citizen becomes a U.S. resident for income tax purposes by either obtaining a green card (thereby becoming a lawful permanent resident) or meeting the substantial presence test.[2] A person is substantially present if he's in the United States 183 days or more in a particular year. The test includes a weighted formula that considers an individual's presence over a 3-year period. Generally, if a person is present in the United States for no more than 120 days in any given year, he can avoid being substantially present.

There are certain exceptions to the substantial presence test. For example, a person in the United States on a full-time student, teacher or trainee visa won't become a U.S. resident for income tax purposes, nor will an employee of an international organization who's in the United States for work.[3] If a person is in the United States and can't leave because of a medical condition, he won't be considered "in" the United States for any day the condition prevents him from leaving.[4] If the medical condition is pre-existing, however, and the person came to the United States for treatment, every day in the United States counts.

On the other hand, the determination of a person's domicile for U.S. transfer tax purposes requires a completely different analysis. A non-U.S. citizen becomes a domiciliary when he lives in the United States and has the intention to remain indefinitely.[5] The taxpayer's intent is a crucial factor. Physical presence without the requisite intent isn't enough to constitute domicile: "Either without the other is insufficient."[6]

Because state of mind is hard to analyze, we look to objective factors to help us determine whether a person's domicile has changed to the United States, including: statements of intent (in visa applications, tax returns,

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and wills); length of U.S. residency; differences in style of living in United States and abroad; continuing ties to a former country; location of business interests; and places where community, club and religious affiliations, voter registration and driver licenses are maintained.[7] A careful planner will regularly help his client consider how these factors add up so the client never finds that he slid unaware into U.S. domicile.

Interestingly, holding a green card doesn't mean you have U.S. domicile. A green card holder is automatically subject to U.S. income tax on worldwide income, but may still be exempt from the transfer taxes because a green card only gives its holder the right to reside and take a job in the United States. It doesn't mean the holder intends to stay indefinitely. In fact, there's a presumption that a person's current domicile will continue.[8] While a green card may be strong evidence of a change of domicile, other factors can overcome it.

The concepts of residence and domicile are distinct, but the singular term "non-resident alien" is often used to describe a person who isn't a U.S. citizen, a U.S. resident or a U.S. domiciliary—that is, a person who isn't subject to either the income tax or the transfer taxes. In this article, we use the terms "foreign person" and "non-U.S. person" to refer to such an individual.

Foreign Trusts

Everyone has choices about how to engage in estate planning. Trusts may be the best choice for high-net-worth individuals (regardless of whether they're U.S. persons or foreign persons), but they're not the only choice. Some clients will be happy relying on a default testamentary regime, such as intestate succession, forced heirship and community property survivorship rights. Some will reside in places where the probate process is relatively efficient and therefore an acceptable option.

Assuming a trust is appropriate, the question turns to whether a foreign trust makes sense. Asset protection is probably the most common reason for establishing a foreign trust, but estate planners are drawn to them for other reasons. By choosing to have another jurisdiction's laws govern a trust, a client can avoid forced heirship or community property survivorship rights under his country's laws.

In general, a foreign trust is one that's governed by and administered under another country's laws. If (1) a court within the United States can exercise primary supervision over the administration of a trust, and (2) only a U.S. person has control over substantial decisions regarding the trust, the trust is a domestic (U.S.) trust.[9] Any trust that isn't a domestic trust is a foreign one.[10] If a non-U.S. trustee, trust protector, advisor, grantor or beneficiary can control a substantial decision, the trust will fail the second prong of the test. A simple veto power held by a non-U.S. person is enough to result in foreign trust status.

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Foreign Trust With U.S. Beneficiary

From an income tax point of view, there are generally two types of trusts. If a trust is a grantor trust, income, deductions and credits flow through to the grantor of the trust.[11] In non-grantor trusts, the trust or its beneficiaries bear the income tax burden.

When a U.S. person creates a foreign trust that has a U.S. beneficiary, the grantor is treated as the owner of the trust property and its income during his lifetime regardless of whether he retains any kind of interest in the trust.[12] A trust has a U.S. beneficiary unless: (1) no part of the income or principal may be paid to or held for the benefit of a U.S. person, and (2) no part of the income or principal would be paid to a U.S. person if the

trust were terminated.[13] There's a rebuttable presumption that a foreign trust created by a U.S. person has a U.S. beneficiary.[14] As a result of these rules, it's difficult for a U.S. person to shift income away from himself by establishing a foreign trust.

Alternatively, when a non-U.S. person creates a foreign trust with a U.S. beneficiary, the U.S. beneficiary is generally responsible for U.S. income tax on any distributions to or for the beneficiary. Unless the trustee provides adequate information about the trust's income, distributions will be treated as accumulation distributions subject to an anti-deferral regime known as the "throwback rule." That rule offsets any tax advantage a

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beneficiary may receive if the trustee times a distribution so it occurs in a low tax rate year. Accumulation distributions are taxed as ordinary income. They also bear an interest charge for each year of accumulation.

To avoid the throwback rules, a non-U.S. person can structure the foreign trust with a U.S. beneficiary to be a foreign grantor trust under narrow circumstances. Generally, either: (1) the non-U.S. person must retain the right to revoke the trust, or (2) the trust is irrevocable and only allows distributions during the grantor's lifetime to the grantor or his spouse.[15]

Moreover, foreign trusts that are established by a non-U.S. person for non-U.S. beneficiaries remain taxwise if: (1) the trust is established in a low tax jurisdiction; and (2) the non-U.S. person establishes the trust more than five years before establishing U.S. residency.[16]

Legislation passed in 1996 also authorizes the Internal Revenue Service to recharacterize transfers from a foreign trust to a U.S. beneficiary, directly or through a non-U.S. intermediary, as a taxable distribution rather than a gift.[17] A foreign grantor may still withdraw assets from a foreign grantor trust and then make taxable gifts to a U.S. beneficiary so long as those gifts are reported. These reporting requirements are exacting, and planners should look to Notice 97-34 for fuller guidance on them.

Non-U.S. Person Domestic Trust

Most domestic trusts established by non-U.S. persons will be classified as non-grantor trusts, obviating any potential income tax advantage because the trust assets would be subject to income tax annually, though if the non-U.S. person later establishes residency, the formerly non-grantor trust can be reclassified as a grantor trust.[18]

Reporting Requirements

If a U.S. person receives gifts from someone he knows or has reason to know is a foreign person and if the gifts exceed $100,000 in the aggregate, the U.S. person is required to file Form 3520.[19] If the gifts qualify as direct medical or tuition payments, reporting isn't required. The IRS may treat unreported gifts as income, and the recipient is subject to a penalty of 5 percent of the value of the gift for each month in which the gift wasn't properly reported, up to a maximum of 25 percent of the value received.

If a U.S. person receives a distribution from a trust that he knows or has reason to know is a foreign trust, he's required to file Form 3520 reporting the name of the trust and the aggregate amount of distributions received from it.[20] Generally, these distributions will be included in the beneficiary's gross income. Failure to report a distribution results in a 35 percent penalty of the gross amount of the distribution.[21] Form 3520 is also required whenever a U.S. person creates a foreign trust or makes a transfer to one.[22]

If a foreign trust is deemed to have a U.S. owner, the trustee must file Form 3520A annually to satisfy the U.S. reporting obligations.[23] If the trustee fails to file the form, the U.S. owner must do so. To assist the U.S. owner and U.S. beneficiaries in monitoring the reporting requirements, the trustee must provide them with copies of the form or other statements containing the information necessary for the owner to prepare and file the form.

Ironically, many non-U.S. persons now view the United States as an attractive safe harbor jurisdiction for asset protection and privacy planning purposes. In particular, many countries around the world (including historic tax havens) have adopted the Common Reporting Standard (CRS) that requires automatic annual reporting of tax and financial information, including the

reporting of assets held in trust from the jurisdiction where the trust is sitused to the non-U.S. person's home country.[24] However, the United States hasn't signed onto CRS, meaning that sensitive details about a domestic trust created by a non-U.S. person may go unreported in the non-U.S. person's home country.[25] The United States' reluctance to sign on to CRS has been a boon to international clients.

Estate Tax

For non-U.S. persons, the estate tax only applies to U.S. situs assets that they own.[26] U.S. citizens and residents have an exclusion that currently protects approximately $11.2 million in assets. In sharp contrast, the exclusion available to a non-U.S. person only protects $60,000 of U.S. situs assets.[27] Every dollar in value beyond that low limit is subject to the estate tax, with the tax rate starting at 26 percent.

Tax treaties may change this. For example, under the U.S.-Canada Tax Treaty, a Canadian who owns U.S. situs assets has a U.S. estate tax exclusion equal to the greater of $60,000 or the exclusion available to a U.S. person multiplied by the ratio of the decedent's U.S. situs assets to his worldwide assets.[28] If a Canadian dies with a $25 million worldwide estate, including $3.75 million of U.S. situs assets, his exclusion under the treaty would be $1.68 million or 15 percent of the $11.2 million exclusion available to a U.S. person. Japan is the only Asian country that has entered into an estate tax treaty with the United States.

The U.S. situs assets in a non-U.S. person's gross estate are subject to estate tax.[29] The rules defining situs aren't always clear, but generally, the following are U.S. situs assets:

- Real estate in the United States;[30]
- Personal property located in the United States, whether tangible or intangible;[31]
- Physical currency in the United States, including cash on deposit with a U.S. financial institution;[32]
- Stock in a U.S. corporation;[33] and
- Debt obligations of a U.S. person.[34]

The Internal Revenue Code doesn't address the situs of partnership interests. Nor do the Treasury regulations. If the partnership should be respected as a separate legal entity, then an interest in it is intangible personal property. Commentators tend to agree that if the partnership owns U.S. situs property or engages in a U.S. trade or business, then an interest in the partnership has U.S. situs.[35] Commentators also agree that if the partnership shouldn't be respected as a separate legal entity, then its situs should be determined by the location of its assets and activity.

Life insurance proceeds are taxable in the estates of U.S. citizens and residents if they hold any incidents of ownership in connection with the policy, but proceeds from a policy on a non-U.S. person's life aren't subject to estate tax even if the non-U.S. person is both the owner and the insured.[36] This difference makes life insurance

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planning particularly attractive for non-U.S. persons.

Outright testamentary gifts to a U.S. citizen spouse qualify for an unlimited marital deduction. The deduction also applies to bequests in trust for a U.S. citizen spouse if a qualified terminable interest election is made. Testamentary gifts to non-U.S. citizen spouses don't qualify for the unlimited marital deduction.[37] The only way to defer estate taxes on a bequest to non-U.S. citizen spouses is by employing a qualified domestic trust (QDOT).[38]

Gift Tax

A non-U.S. person is subject to gift tax on gratuitous transfers of U.S. situs real property, tangible personal property located in the United States on the date of the gift and physical currency that's situated in the United States, including cash on deposit with a U.S. financial institution.[39]

The exclusion that allows U.S. citizens and residents to transfer $11.2 million of gifts tax-free isn't available to non-U.S. persons. The $15,000 annual gift tax exclusion, however, is available to them, as are the unlimited

exclusions for direct medical and tuition payments.[40] Gift splitting isn't allowed if either spouse is a non-U.S. person.

The gift tax isn't imposed on lifetime transfers of intangible personal property even if that property has a U.S. situs.[41] This is a notable difference to the estate tax rules. Shares in a U.S. corporation are intangible personal property that would be subject to the estate tax at a non-U.S. person's death; however, those shares can be transferred during life free of gift tax. The gift tax treatment of partnership interests is unclear. The IRS won't issue rulings on whether a partnership interest is intangible personal property for gift tax purposes. Thus, planners should be mindful that the gift tax analysis is probably the same as the estate tax analysis described above.

The key is to implement effective strategies before establishing U.S. domicile.

An unlimited marital deduction is available for lifetime gifts by non-U.S. persons to their U.S. citizen spouses, but, gifts to a spouse who isn't a U.S. citizen are subject to gift tax after the first $152,000 (indexed for inflation).[42] This special exclusion is annual. Gifts in trust to a spouse may not qualify for the marital deduction, requiring the use of either a qualified terminable interest property trust or a QDOT, depending on whether the donee spouse is or isn't a U.S. citizen.[43]

Gifts could be made outright to a beneficiary, but if they're substantial, they should be made in a properly structured trust so the assets don't become part of the beneficiary's taxable estate. To avoid estate tax inclusion in the grantor's estate, the grantor shouldn't have any retained interests under IRC Sections 2035 through 2038.[44]

Choices of situs and governing law for a trust are important. A trust established under California law must terminate in about 90 years, but a trust established in Delaware can last 365 years, and one established in South Dakota can last in perpetuity.[45] If asset protection is an objective, the grantor can choose to use the laws of a state that allows self-settled domestic asset protection trusts. In this circumstance, the grantor shouldn't serve as a trustee.

Six Strategies to Consider

Because the United States can impose its transfer taxes on non-U.S. persons only in limited situations, special planning opportunities are available to them. The key is to implement effective strategies before establishing U.S. domicile. Some common planning strategies include:

1. Owning foreign corporations. Foreign corporations have a special place in estate planning for non-U.S. persons. They aren't subject to the estate tax because they aren't U.S. situs assets, and they're excluded from the gift tax as intangible personal property. Consequently, a non-U.S. person can create a foreign corporation to invest in U.S. situs assets, and he can make lifetime gifts of his interest in the corporation to his children, including those living in the United States, without incurring any U.S. transfer tax. If he dies while he's still a non-U.S. person, the investments will escape the estate tax.

While there's no clearly acceptable timeline for funding a foreign corporation to invest in or transfer control of U.S. situs assets, the planner should remember the step transaction doctrine. Suppose a non-U.S. person converts cash on deposit with a U.S. financial institution (a U.S. situs asset) to shares of a foreign corporation (a non-U.S. situs asset) and soon makes a gift of the shares. The IRS may treat him as if he made a gift of the U.S. situs cash.

The foreign corporation must engage in legitimate business activities and operate at an arm's length. Otherwise, the corporate form may be ignored and ownership determined as if the arrangement were a trust. As discussed below, the IRS may assert that a non-U.S. person who's either a trustee or a beneficiary of a trust actually owns the trust assets for all tax purposes.

We would be remiss if we failed to point out three important income tax aspects of owning a foreign corporation.

First, if a U.S. person recognizes gains from the sale of shares in a foreign corporation that receives the majority of its income as passive income, the gains may be taxed as ordinary income, not capital gains.[46] A

non-U.S. person should divest himself of such holdings before becoming a U.S. person.

Second, if the foreign corporation sells U.S. situs assets, there will be a loss of the long-term capital gains (LTCG) preference, which applies only to individuals and non-grantor trusts.[47] Thus, the foreign corporation will be taxed at corporate tax rates, though this problem has been somewhat alleviated now that the U.S. corporate tax rate has fallen to 21 percent.

Third, with regard to a foreign corporation that owns U.S. real estate, there's a possibility that the use of the home by the shareholder or the shareholder's family will give rise to imputed rental income. In a solely U.S. domestic situation, the typical approach to this issue has been to deny deductions to the corporation and treat the excess fair rental value over any actual rent as a constructive dividend. However, this treatment may be largely irrelevant to a foreign corporation and a non-U.S. person shareholder. Thus, the IRS may rely instead on the transfer pricing rules of IRC Section 482, which, although not clear, could be used to create a payment of income between parties that isn't limited to allocating actual income.[48]

2. Giving away foreign assets. Gifting foreign assets is the first step to consider. Transfer taxes only come into play when U.S. situs assets are involved, so if the non-U.S. person has children or grandchildren in or who may want to come to the United States, his first consideration should be to complete irrevocable gifts of foreign assets. Such gifts will be free of U.S. gift tax, no matter how much the gift is worth. And, because the assets will no longer belong to the non-domiciliary, if he later becomes a U.S. domiciliary, the gift will have reduced his taxable estate. Thus, gifts of non-U.S. situs assets by a non-U.S. person who intends to become a U.S. domiciliary is an effective form of pre-immigration planning.

If the donee later becomes a U.S. person, the parties must be careful of a special income tax attribution rule that will apply if the donee creates a grantor trust that benefits the donor. In that case, the donor will be treated as the owner of the transferred assets, and he'll bear the income tax on income from that portion of the trust estate.[49] It's easy to imagine the situation in which a grantor wants to name a parent as a permissible beneficiary of a trust. When working with clients who have family members outside the United States, the planner must explore past intra-family transfers carefully.

3. Making gifts of cash from foreign bank. Cash is considered tangible personal property, and transfers of it are subject to the gift tax if the cash is on deposit with a U.S. financial institution.[50] So, the transfer of a non-U.S. person's cash on deposit with a New York bank account is a taxable gift, but the transfer of assets held by the same person in a foreign bank is not.[51] Because seemingly unrelated financial institutions can be co-owned or otherwise associated with each other, the planner should work carefully with the client to make sure that the funds are in no way withdrawn from a U.S. financial institution.

4. Buying U.S. real estate. It's increasingly common for non-U.S. persons to buy U.S. real estate, often as second homes or as investment properties. Chinese buyers, for example, spent $28.6 billion on U.S. homes in 2015, with the most investments being made in California and Washington state.[52]

If a non-U.S. person owns U.S. real estate, it will be included in his gross estate for estate tax purposes.[53] If he gives the real estate away while he's alive, the transfer will be subject to gift tax.[54] It would be better if the buyer creates and funds a foreign corporation that purchases the property. As discussed above, if the corporate formalities are observed, an interest in a foreign corporation is intangible personal property that escapes both transfer taxes.

It's important to plan well ahead of any purchase so the corporation is able to purchase the property. If the

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non-U.S. person buyer takes title in his own name and then transfers the property to a foreign corporation, the transfer will likely be subject to income tax as if the property were sold. While using a foreign corporation is good transfer tax planning, as discussed above, if the buyer becomes a U.S. person and subsequently sells the property, he won't be able to take advantage of the lower individual LTCG rates.[55] If instead, the shareholder of the foreign corporation remains a non-U.S. person and if the foreign stock is sold, then no U.S. capital gains will be incurred.[56] However, the purchase of stock won't cause a step-up in basis in the underlying real property, thus subjecting the purchaser with future capital gains on the sale of real estate. This could be important as it will likely factor into the price the purchaser is willing to pay for the foreign stock.

Alternatively, depending on the buyer's objectives, an irrevocable foreign or domestic trust could be used to purchase the real estate. The trust should be created and funded well before the purchase so the trust is clearly the buyer. Because banks resist lending to irrevocable trusts, the grantor should contribute enough to fund the entire purchase. The grantor shouldn't be a trustee of the trust. Use of the trust assets may appear to be a retained interest, so the safest approach is for the grantor to have no beneficial interest in the trust unless it's fully within the discretion of an independent trustee. If his spouse and children are beneficiaries, he may use the property as their guest. If he uses the property regularly, it would be safer for him to pay a fair market rent for his use, or the buyer can retain a portion of the property (perhaps 15 percent) and enter into a co-tenancy agreement with the trust for the maintenance and use of the property such that the buyer's use of the property is attributed to the buyer's percentage of ownership.

Using an irrevocable domestic trust doesn't result in any income tax benefits, but it can have significant transfer tax benefits. These trusts can serve as dynasty trusts for the grantor's U.S. descendants without GST tax issues.

5. Funding a trust with stock in U.S. corporations. Recall that the gift tax doesn't apply to transfers of intangible personal property even if it's U.S. situs. As a result, a non-U.S. person can fund a trust for U.S. beneficiaries with shares of stock of a U.S. corporation free of gift tax, removing those shares from his estate. This is a unique planning opportunity based on the difference between gift tax and estate tax treatment of shares in a U.S. corporation.

6. Obtaining life insurance. Life insurance is a tried and true tool in estate planning. Because proceeds from a policy owned by a U.S. citizen or resident are subject to estate tax, careful planning, an irrevocable life insurance trust and attention to detail to the terms of the policy are necessary to protect those proceeds. On the other hand, proceeds from a policy on the life of a non-U.S. person aren't subject to estate tax because they aren't U.S. situs assets.[57] The life insurance policy (whether issued by a U.S. insurer or a foreign insurer) is treated as an intangible property, meaning that the policy itself can also be gifted by a non-U.S. person during life without triggering gift tax.

This special rule only applies to policies insuring a non-U.S. person's life. If a non-U.S. person owns a policy on a U.S. person's life, the value of that policy (not the death benefits) will be included in the gross estate of the non-U.S. person.

If a non-U.S. person plans to live in the United States and wants to hedge against the risk of inadvertently establishing U.S. domicile, he should consider putting life insurance in place while he's in the United States. If his immigration plans go awry, his family will have the proceeds to cover the potential estate tax.

Plan Ahead

Planning for non-U.S. persons is complicated. The issues are complex, and the rules are sometimes counterintuitive—even for seasoned U.S.-based tax planners. Explaining these concepts to a foreign person or foreign advisor requires patience, but the income and transfer tax savings can be remarkable.

Endnotes

1. Internal Revenue Code Section 7701(a)(30); Treasury Regulations Section 20.0-1(b)(1).
2. IRC Section 7701(b)(1)(A)(i), 7701(b)(1)(A)(iii).
3. Section 7701(b)(5)(A), 7701(b)(5)(B).
4. Section 7701(b)(3)(D).
5. Treas. Regs. Section 20.0-1(b)(1).
6. *Mitchell v. United States*, 88 U.S. 350, 353 (1875).
7. *See Estate of Jan Willem Nienhuys*, 17 T.C. 1149 (1952); Revenue Ruling 80-209.
8. *Mitchell*, *supra* note 6.
9. Section 7701(a)(30).
10. Section 7701(a)(31).
11. IRC Sections 671 to 679.

12. Section 679.
13. Section 679(c)(2)(C).
14. Section 679(d).
15. IRC Section 672(f)(2).
16. Section 679(a)(4)(A).
17. Section 672(f)(4).
18. Section 672(f)(1).
19. IRC Section 6039F.
20. IRC Section 6048(c).
21. IRC Section 6677(a).
22. IRC Section 6048.
23. Section 6048(b).
24. *See* OECD Automatic Exchange Portal, *www.oecd.org/tax/automatic-exchange/common-reporting-standard.*
25. This result would be altered if the United States and the non-U.S. person's home country have entered into an intergovernmental agreement under the Foreign Account Tax Compliance Act.
26. IRC Sections 2101, 2103 and 2104.
27. IRC Section 2102(b)(1).
28. Tax Convention, U.S.-Canada, Paragraph 2 of Article XXIX B (Taxes Imposed by Reason of Death) (1995 Protocol).
29. Section 2103.
30. Treas. Regs. Section 20.2104-1(a)(1).
31. *Ibid.* at (a)(2).
32. *See, e.g., Blodgett v. Silberman,* 277 U.S. 1 (1928), Internal Revenue Service General Counsel Memorandum (GCM) 36860 (1976), Private Letter Ruling 7737063 (June 17, 1977).
33. Section 2104(a).
34. *See supra* note 30.
35. *See* Diana S.C. Zeydel and Grace Chung, "Estate Planning for Noncitizens and Nonresident Aliens: What Were Those Rules Again," *Journal of Taxation* (2007), at p. 1; *see also* Glenn G. Fox, "U.S. Estate Planning for Nonresident Aliens from Treaty Countries, a comparison of Germany, Austria, France and the United Kingdom," *https://bit.ly/2GJqShc* (May 17, 2007), at p. 5, citing *Sanchez v. Bowers,* 70 F.2d 715 (2d Cir. 1934).
36. IRC Section 2042, IRC Section 2105(a).
37. IRC Section 2056(d)(1).
38. Section 2056(d)(2).
39. Treas. Regs. Sections 25.2511-3(a) and (b).
40. IRC Section 2503(e).
41. IRC Section 2501(a)(2).
42. IRC Section 2523(a).
43. Section 2523(b).
44. Section 2104(b).
45. *See* Cal. Prob. Code Section 21205; Nev. Rev. Stat. Sections 111.103 to 111.1039; South Dakota repealed its rule against perpetuities in 1983.
46. IRC Section 1291(a) et seq.
47. Rev. Rul. 84-139.
48. *See, e.g., Transport Manufacturing & Equipment Co. v. Mommr,* 434 F.2d 373 (8th Cir. 1970), *aff'g* T.C. Memo. 1964-190; Treas. Regs. Section 1.482-1(f)(2)(ii).
49. IRC Section 675(f)(5).
50. IRS GCM 36,860 (Sept. 24, 1976); Treas. Regs. Section 25.2511-3(b).
51. *See Jorgensen v. U.S.,* 152 F. Supp. 73 (Ct. Cl. 1957); PLR 200340015 (Oct. 3, 2003).
52. Janet I. Tu, "Affluent Chinese see upscale safe haven in Seattle area" (citing statistics provided by the National Association of Realtors), *Seattle Times* (Jan. 16, 2016), *www.seattletimes.com/business/economy/affluent-chinese-see-upscale-haven-in-seattle-area.*
53. Treas. Regs. Section 20.2104-1(a)(1).
54. Treas. Regs. Sections 25.2511-3(a)(1) and (b)(1).
55. IRC Sections 1(h) and 1201.
56. IRC Section 897(c).
57. Section 2105(a).

SPOT LIGHT

Reunited

Welcome Home! by Richard Stone sold for $2,500 at Swann Auction Galleries' Illustration Art sale in New York City on June 5, 2018. This illustration by Stone is an original painting for American Airlines from 1956. Stone earned a bachelor of fine arts degree at Yale University.