

NON-RESIDENT ALIEN GIFT AND ESTATE TAX ISSUES AND UPDATES

44TH ANNUAL INTERNATIONAL TAX CONFERENCE
THE FLORIDA BAR TAX SECTION AND THE FLORIDA INSTITUTE OF CPAS

Panelists: **Lawrence J. Chastang**, Manager and Chairman of the Board of Directors, Chastang & Partners, LLC
Rosy L. Lor, Tax Principal, National Tax Office, BDO USA, P.C.
Daniel N. Price, Managing Member, Law Offices of Daniel N. Price, PLLC

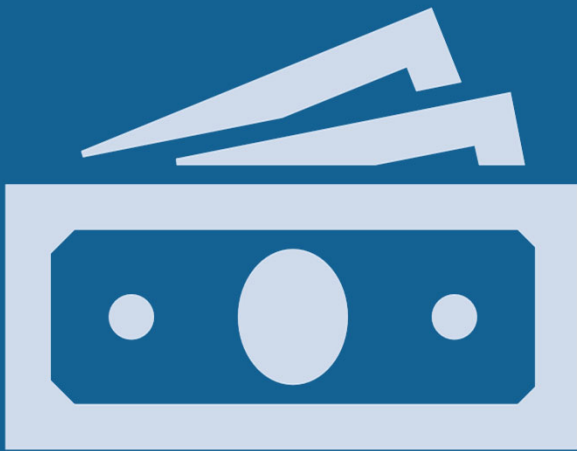
GENERAL DISCLAIMER

These materials do not constitute tax or legal advice and cannot be relied upon for purposes of avoiding penalties under the Internal Revenue Code. These materials may omit discussion of exceptions, qualification, definitions, effective dates, jurisdictional differences, and other relevant authorities and considerations. In no event should a reader rely on these materials in planning a specific transaction or litigation. Non-lawyers should not attempt to provide legal services or legal advice in circumstances where that would violate laws against the unauthorized practice of law.

AGENDA FOR TODAY

- 1** Welcome, Session Scope, and Objectives
- 2** Nonresident Alien (NRA) Cash Gifts from Bank Accounts
- 3** IRS Training Materials vs. Statutes and Regulations
- 4** Transfer Certificates — Procedures and Practitioner Guidance
- 5** Lawful Permanent Residence (Green Card) and Domicile
- 6** Estate Tax Treaty Prorated Unified Credit for Nonresidents
- 7** Puerto Rico Birth or Residency — Federal Tax Implications

What is Cash?



- Black’s Law Dictionary defines “Cash”
 1. Money or its equivalent.
 2. Currency or coins, negotiable checks, and balances in bank accounts.
- Cash or money in English is subject to multiple meanings
- Other languages distinguish between tangible cash and intangible cash

Cash versus Currency

EINFACH NUR ZAHLEN? JUST NUMBERS?

BUCHGELD – DAS GUTHABEN AUF DEM KONTO

BOOK MONEY – YOUR CREDIT BALANCE

So wichtig Banknoten und Münzen in unserem Alltag sind, die Miete oder größere Einkäufe lassen sich sicherer und bequemer per Überweisung oder per Karte zahlen. Wir benutzen dafür Geld, das als Guthaben auf unserem Bankkonto liegt: das sogenannte Buchgeld. Dieses Geld kann man nicht anfassen, es existiert nur als elektronischer Datensatz in den Computern der Bank. Der Begriff Buchgeld spielt auf die Entstehungszeit des Bankwesens an, als Geldwechsler die Guthaben ihrer Kunden mit der Hand in Kontenbücher schrieben. Dieses stofflose Geld ist die Grundlage des bargeldlosen Zahlungsverkehrs. Im heutigen Wirtschaftsleben spielt es die Hauptrolle: Im Euro-Raum gibt es ungefähr achtmal so viel Buchgeld wie Bargeld.

Important though banknotes and coins may be in everyday life, it's safer and more convenient to pay the rent or make large purchases by credit transfer or card. The money you use for such payments is the book money deposited in your bank account. You can't touch book money because it's no more than a set of data in the bank's computer systems. The term book money refers to the early days of banking when money changers noted their customers' credit balances manually in their ledgers. This immaterial money is the basis of cashless payment systems and plays the leading role in today's business world. In the euro area there is about eight times more book money than cash.

Cash versus Currency (cont'd)

- In German Buchgeld = lit. “book money” or intangible money recorded in a ledger (e.g. a credit with a financial institution)
- In German Bargeld = lit. “bare money” or tangible money (e.g. physical money such as coins and currency)

Image on slide 5 was taken at the Geldmuseum (money museum) in Frankfurt, Germany sponsored by the Deutsche Bundesbank

NRA Cash Gift from Bank Accounts



- Is U.S. currency a tangible or intangible asset?
- Are deposits in a bank account an intangible or tangible asset?
- Does the gift of cash in a U.S. bank account in the name of a non-resident, not a citizen of the United States trigger a U.S. gift tax?

NRA Cash Gift from Bank Accounts (cont'd)

IRS views cash in bank account as tangible asset? See PLR-121829-06:

“Old Trust and New Trust were funded with cash transferred from Settlers’ accounts located outside the United States. Thus, although Settlers, nonresident aliens, transferred cash, which is tangible personal property for purposes of § 2501(a)(2), the cash was not physically situated within the United States prior to the transfer. Therefore, pursuant to § 25.2511-3(b)(1), the transfer of cash was not a transfer that was subject to the gift tax under § 2501(a).”

NRA Cash Gift from Bank Accounts Hypotheticals

Monica is citizen and resident of Columbia. She owns a vacation condo in Miami and occasionally vacations in the U.S. Monica has several U.S. based financial accounts including a savings account at Bank of America (BoA). Monica is not a U.S. citizen, does not have a U.S. green card, and does not meet the substantial presence test.

Monica's son, Mario, is also a citizen and resident of Columbia. Mario is not a U.S. citizen, does not have a U.S. green card, and does not meet the substantial presence test. Mario also has a savings account at BoA.



NRA Cash Gift from Bank Accounts Hypotheticals (cont'd)

Gift example 1

Monica transfers \$100,000 from her BoA savings account to Mario's BoA account as a gift to Mario.

Gift example 2

Monica adds Mario as a joint owner of her BoA savings account and tells Mario he may have \$100,000 from the account as a gift from her. Mario obtains a cashier's check from BoA for \$100,000.

Gift example 3

Monica and Mario both travel to a BoA branch. Monica withdraws \$100,000 in currency from her BoA savings account and gives the currency to Mario as a gift.



Outside Counsel Provided Training to IRS

What did outside Counsel tell the IRS?

Property subject to gift tax

- Real and tangible personal property **in the U.S.**
- Gifts of U.S. intangible property are *not* subject to gift tax under IRC § 2501(a)(2).
 - Examples of intangible property:
 - Debt obligations of a U.S. person
 - Stock of U.S. corporations

IRS Training Materials vs. Statutes and Regulations

- IRS agents may reference internal guides or training materials during audits, but these are for internal use only.
 - Training materials do not have the force of law; they interpret, not establish, rules.
 - The Internal Revenue Code and Treasury Regulations are the true sources of tax law.
 - If there's a conflict, the Code and regulations override training materials.
 - Courts routinely disregard IRS manuals or internal materials when they conflict with statutes or regulations (see, e.g., *Adler v. Comm'r*, 330 F.2d 91 (9th Cir. 1964)).
 - Only the law, as written and interpreted by courts, is binding.
- **Best Practices:**
 - If an agent relies on incorrect training, cite the relevant Code or regulations.
 - Request decisions be based on authoritative sources, not internal guidance.
 - Taxpayers should rely on the law, not informal IRS interpretations.
 - Challenge positions unsupported by the Code or regulations.

Transfer Certificates — Procedures and Practitioner Guidance

Why Is a Transfer Certificate Needed?

- Required to transfer or release U.S. situs assets (e.g., U.S. stock, real estate) after a nonresident's death. U.S. federal estate tax may apply to these assets under IRC §§ 2101–2108.

IRS Requirement

- The executor must file Form 706-NA if U.S. assets exceed \$60,000.
- The IRS issues Form 5173 (Transfer Certificate) only after confirming all estate tax obligations are satisfied.

Technical Rules

- U.S. financial institutions, brokers, and custodians cannot release assets without a transfer certificate, as doing so may expose them to estate tax liability. Treas. Reg. § 20.6325-1.

IRS Transfer Certificates: Current Average 18–24 Month Processing Time—Addressing Delays?

- Taxpayer Advocate Service assistance?
- Will custodian accept copy of estate tax return/transcript and other documentation showing any estate taxes have been paid?

U.S. Lawful Permanent Residence (Green Card) and Domicile for U.S. Federal Gift and Estate Tax



- U.S. citizens and residents are taxed on worldwide gifts and worldwide estate assets for U.S. federal gift and estate tax purposes.
- The residency rules for gift and estate tax are different from the rules that apply for U.S. federal income tax purposes.
- For gift and estate tax purposes, U.S. residency is determined based on whether the individual has a **domicile** in the U.S., *i.e.*, is present in the U.S with the intent to remain indefinitely. This is a facts and circumstances test.
- Being a green card holder is one factor to consider in the analysis.

U.S. Lawful Permanent Residence (Green Card) and Domicile for U.S. Federal Gift and Estate Tax Hypotheticals

Christian, a German citizen in a leadership role at his German company, regularly travels to work at the U.S. parent company near Philadelphia. He and his wife, Joanna, have two teenage children, a primary residence in Munich, and a vacation property in Spain. Their banking and investments are in Germany, and their extended families live there. During the first three years, Christian's trips to the U.S. were periodic and short. His family remained in Germany, and he stayed at hotels on his work trips. Beginning in Year 4, Christian began spending about 120 days in the U.S. each year.

Domicile example 1

In Year 5, with his home and work arrangements unchanged, Christian filed a green card application to preserve future U.S. employment options.

U.S. Lawful Permanent Residence (Green Card) and Domicile for U.S. Federal Gift and Estate Tax Hypotheticals (cont'd)

Domicile example 2

In Year 6, he was granted a green card and bought a condo in Philadelphia, but Joanna and the children stayed in Germany. Christian continued to own the Munich home and the Spain vacation property and maintained his German financial accounts. His pattern of travel to the U.S. was work-driven.

Domicile example 3

In Year 7, Joanna accepted a job in Philadelphia and moved to the U.S. on an H-1B visa, while their children remained in Germany for college. Their children visit them in Philadelphia during holidays. Christian and Joanna kept their German and Spanish assets.

Estate Tax Treaty Prorated Unified Credit for Nonresident Decedents

- Nonresident decedents' estates are only eligible for a credit against U.S. federal estate tax of \$13,000 (equal to a \$60,000 exemption of assets) under the Code. IRC § 2102(b).
- However, certain U.S. estate tax treaties may allow a prorated exemption for nonresident decedents' estates eligible for benefits under the applicable treaty.
 - The prorated exemption is based on the ratio: U.S. situs assets ÷ Worldwide assets
- **Common Mistake: Don't apply the ratio to the lifetime exclusion. Apply it to the unified credit.**
 - See *Mudry v. United States*, 11 Cl. Ct. 207 (1986) (U.S.-Switzerland estate tax treaty) and *Estate of Burghart v. Commissioner*, 80 T.C. 705 (1983), aff'd, 734 F.2d 3 (3d Cir. 1984) (U.S.-Italy estate tax treaty)
 - See IRC § 2102(b)(3)

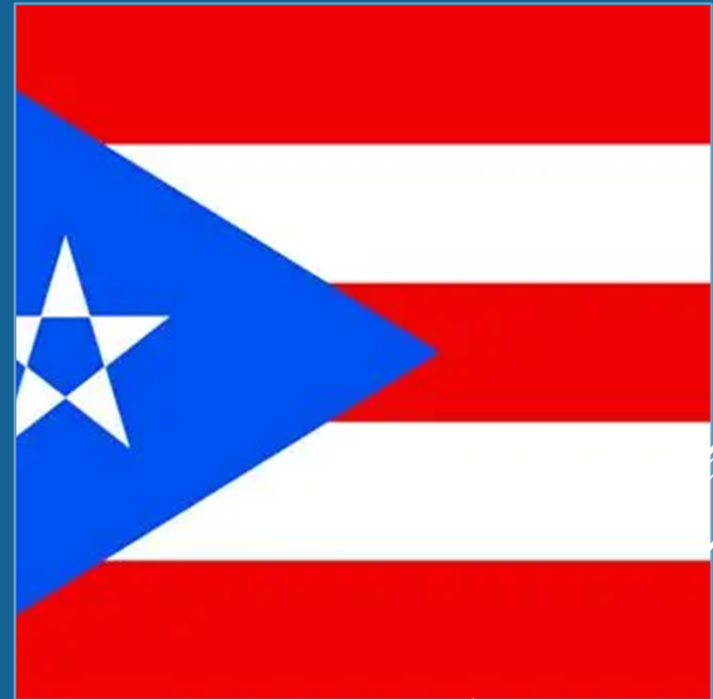
Estate Tax Treaty Prorated Unified Credit for Nonresident Decedents (cont'd)

- How to Calculate prorated credit
 - Allowable credit = (U.S. situs assets ÷ Worldwide assets) × Unified credit amount (e.g., \$5,945,800 for 2026)

Calculation Method	Resulting Credit
Correct: 5% × \$5,945,800 (unified credit)	\$297,290
Incorrect: 5% × \$15,000,000 (exclusion)	\$253,300

Puerto Rico Birth or Residency — Federal Tax Implications

- **Jones-Shafroth Act (March 2, 1917)**
 - Granted U.S. citizenship to Puerto Ricans born after April 11, 1899.
 - Congress aimed to avoid imposing U.S. estate and gift taxes on Puerto Ricans.
 - Required eligible Puerto Rican men to register for Selective Service as the U.S. prepared for World War I.
 - The main motivation for the Act.



Puerto Rico Birth or Residency — Federal Tax Implications (cont'd)

➤ **U.S. Estate Tax – Puerto Rico**

- U.S. citizen -born in Puerto Rico- dies in Puerto Rico where he is domiciled.
- The estate is treated as that of a non-resident, non-citizen so taxable assets are:
 - U.S. real property
 - Tangible personal property located on the U.S. mainland
 - Stock of U.S. corporations.
- U.S. citizen- residing in Puerto Rico (think Nuyorican) is subject to U.S. federal gift tax on their worldwide assets and have same lifetime exclusions as U.S. mainland residents/citizens.

Puerto Rico Birth or Residency Examples

Julio Rodriguez Gonzalez Burgos is a resident/domiciliary of Puerto Rico. He owns a vacation home in Miami worth \$1 million. His other assets are in Puerto Rico and worth \$4 million. His total net worth is \$5 million.

Example 1

- If Julio was born in New York and dies in 2026 while a resident of Puerto Rico, no U.S. federal estate tax due because of the \$15 million lifetime exemption.
- If he was born in Puerto Rico, his U.S. taxable estate is \$940,000—Miami vacation home less \$60,000 exemption.

Example 2

What if Julio was married to Anita Rodriguez Gonzalez Burgos—

- If Anita was born in Miami and is a U.S. citizen, she is treated as a U.S. citizen spouse for U.S. federal estate and gift tax purposes.
- If Anita was born in Puerto Rico, she is not considered a U.S. citizen spouse for U.S. federal estate and gift tax purposes.

SPEAKERS

Non-Resident Alien Gift and Estate Tax Issues and Updates



LAWRENCE J. CHASTANG, CPA, TEP

MANAGER AND CHAIRMAN OF THE BOARD OF DIRECTORS

CHASTANG & PARTNERS, LLC

OFFICE: 407-813-1820

OFFICE: 813-556-9550 (TAMPA)

MOBILE: 407-963-7585

LCHASTANG@CHASTANGPARTNERS.COM

Lawrence J. Chastang, CPA, TEP specializes in international taxation, assisting clients ranging from small entrepreneurs to major multi-national subsidiaries with their individual and corporate work. He advises on a wide range of domestic and international tax issues with clients that include multinational corporations, partnerships, and entrepreneurs, as well as foreign persons investing in the United States.

He recently retired as Chairman of Global Services for CliftonLarsonAllen LLP.

Having served international clients for more than 35 years, he has developed strong business ties in the international community. Larry Chastang is acknowledged as one of Florida's leading experts in international business and taxation and is fluent in Spanish and French.



ROSY L. LOR

TAX PRINCIPAL
NATIONAL TAX OFFICE--INTERNATIONAL PRIVATE CLIENT SERVICE
BDO USA, P.C.
571-461-6747
RLOR@BDO.COM

Rosy L. Lor is a Tax Principal in BDO USA's Private Client Services National Tax Office and co-leads the firm's Private Client Services International Tax Committee. She focuses on cross-border tax matters affecting high-net-worth individuals. Her areas of experience include pre-immigration and expatriation tax planning, cross-border estate and gift tax matters, foreign trusts, tax treaties and other international agreements, and tax controversy. She is a member of the AICPA Form 3520 Penalties Task Force and the Society of Trust and Estate Practitioners.

Prior to joining BDO, she worked on cross-border private client tax matters at a Big Four accounting firm. She also spent over 13 years with the IRS Office of Chief Counsel, where she last served as a Senior Technical Reviewer in the IRS Office of Associate Chief Counsel (International).

She received her Master of Laws in Taxation from Georgetown University Law Center and her Juris Doctor from American University, Washington College of Law.



DANIEL N. PRICE

MANAGING MEMBER

LAW OFFICES OF DANIEL N. PRICE, PLLC

OFFICE: 210-960-2920

FAX: 210-714-7646

DAN@PRICETAXLAW.COM

WWW.PRICETAXLAW.COM

[HTTPS://WWW.LINKEDIN.COM/IN/DANIEL-PRICE-95A20234](https://WWW.LINKEDIN.COM/IN/DANIEL-PRICE-95A20234)

Daniel N. Price focuses his practice on federal tax and Title 31 matters including civil and criminal defense of IRS audits and investigations and much more. Before founding his own firm, Law Offices of Daniel N. Price, PLLC, Dan served as an attorney for the Office of Chief Counsel of the IRS for more than 19 years. Dan's government service included extensive work in international tax enforcement. Dan's deep expertise concerning the IRS' voluntary disclosure practice, the Streamlined Filing Compliance Procedures, and international penalties allows him craft strategies to mitigate civil penalties and criminal exposure. Dan further assists taxpayers in battling significant penalties assessed by the IRS and certain state tax authorities.

APPENDIX

U.S FEDERAL GIFT AND ESTATE TAX

- U.S. citizens and residents are subject to U.S. federal gift tax (“FGT”) on taxable gifts of property made during their lifetime, regardless of where the property is located. IRC §§ 2501, 2511.
- Nonresident, non-U.S. citizen donors are subject to FGT only on gifts of real property and tangible personal property situated within the United States. Treas. Reg. § 25.2511-1(b).
- U.S. federal estate tax (“FET”) applies to the worldwide estate of a U.S. citizen or resident decedent. IRC §§ 2001, 2031.
- For nonresident, non-U.S. citizen decedents, only assets located in the United States (“U.S. situs assets”) are included in the taxable estate for FET purposes. IRC §§ 2101, 2103.
- Whether a non-U.S. citizen is a U.S. resident for FGT and FET purposes follows different rules than those for U.S. federal income tax purposes.
- Non-U.S. citizens are considered U.S. residents for FGT or FET only if they are domiciled in the U.S. at the time of a gift or death. Treas. Reg. § 20.0-1(b)(1), § 25.2501-1(b).
- Domicile is established by living in a place, even briefly, with no definite intention to leave.
- Simply residing without the intent to stay indefinitely does not establish domicile, nor does intending to change domicile without actually moving.
- Determining domicile involves two key factors—physical presence and intent to remain the latter. Intent is mainly a factual question. *Carrasco-Favela v. INS*, 563 F.2d 1220, 1222 (5th Cir.1977); *Estate of Jack v. United States*, 54 Fed. Cl. 590, 599 (Fed. Cl. 2002).

U.S FEDERAL GIFT AND ESTATE TAX (CONT'D)

- Factors courts have considered in evaluating an individual's intent include the following:
 - Types of travel documents, work permits, and other official documents issued by the U.S. or another country
 - Number and location of business and property interests
 - Family immigration history
 - Comparisons of residential properties
 - Testimony and statements regarding residence and intentions
 - Motivations for presence in the U.S. or another country
 - Travel history and duration of stays in the U.S.
 - Location of personal, political, charitable, spiritual, and social affiliations
- See, e.g., *Estate of Khan*, T.C. Memo. 1998-22; *Estate of Fokker*, 10 T.C. 1225 (1948); *Estate of Paquette v. Commissioner*, T.C. Memo 1983-571



FGT SUMMARY

	U.S. citizen or resident	Nonresident
Assets subject to FGT	<ul style="list-style-type: none">▶ Worldwide assets	<ul style="list-style-type: none">▶ Real property and tangible personal property located in the U.S. (e.g., cash, furnishings)▶ Intangible property is generally not subject to FGT even if located in the U.S. (e.g., stock)
Lifetime gift tax exemption	<ul style="list-style-type: none">▶ \$15M in 2026	<ul style="list-style-type: none">▶ Not applicable
Annual gift tax exclusion	<ul style="list-style-type: none">▶ \$19,000 in 2026	<ul style="list-style-type: none">▶ \$19,000 for real and tangible property located in U.S. in 2026
Marital deduction	<ul style="list-style-type: none">▶ Unlimited marital deduction for gifts to U.S. citizen spouses▶ \$194,000 for gifts to a resident alien or noncitizen spouse in 2026	
Gift splitting by spouses	<ul style="list-style-type: none">▶ Permitted if both spouses are U.S. citizens or residents	<ul style="list-style-type: none">▶ Not permitted
Charitable deduction	<ul style="list-style-type: none">▶ Available for gifts to U.S. or foreign qualified organizations	<ul style="list-style-type: none">▶ Generally, available only if gift made to U.S. organizations, unless permitted under certain tax treaties
Gift tax rates	<ul style="list-style-type: none">▶ 18%-40% rate in 2026	
Applicable tax form	<ul style="list-style-type: none">▶ Form 709	

FET SUMMARY

	U.S. citizen or resident	Nonresident
Assets subject to FET	<ul style="list-style-type: none"> ▶ Worldwide assets 	<ul style="list-style-type: none"> ▶ U.S. situs assets: real property and tangible personal property located in the U.S. (e.g., artwork, furnishings) ▶ U.S. stocks or options ▶ Deferred compensation and pensions payable by U.S. payor ▶ Debt of U.S. person (unless portfolio debt) ▶ Annuity contracts enforceable against U.S. payor ▶ Excludes: U.S. bank deposits (including certificates of deposit), U.S. Treasury bonds, insurance on life of nonresident alien ▶ Uncertainty as to whether interests in U.S. partnerships and LLCs are intangible property or whether situs determined by looking at underlying assets
Lifetime gift tax exemption	▶ \$15M in 2026	▶ \$60,000 (equal to credit of \$13,000)
Marital deduction	<ul style="list-style-type: none"> ▶ Unlimited deduction for transfers to U.S. citizen spouses only ▶ Unlimited deduction available for transfers to resident alien and noncitizen spouses if assets transferred through a qualified domestic trust ("QDOT") 	
Charitable deduction	▶ U.S. or foreign qualified organizations	▶ U.S. organization or use in the U.S. and limited to value included in the gross estate; treaty provisions may apply
Deduction limitations	▶ None	▶ Limit by ratio of U.S. situs gross estate to worldwide estate
Estate tax rates	▶ 18%-40% in 2026	
Applicable tax form	▶ Form 706	▶ Form 706-NA