

PROTOCOL
AMENDING THE CONVENTION BETWEEN
THE UNITED STATES OF AMERICA
AND
THE FEDERAL REPUBLIC OF GERMANY
FOR THE AVOIDANCE OF DOUBLE TAXATION
WITH RESPECT TO TAXES ON ESTATES, INHERITANCES, AND GIFTS,
SIGNED AT BONN ON DECEMBER 3, 1980

The United States of America and the Federal Republic of Germany, desiring to conclude a Protocol to amend the Convention Between the United States of America and the Federal Republic of Germany For the Avoidance of Double Taxation with Respect to Taxes on Estates, Inheritances, and Gifts, signed at Bonn on December 3, 1980 (hereinafter referred to as "the Convention"), have agreed as follows:

ARTICLE 1

Subparagraph c) of paragraph 3 of Article 4 (Fiscal Domicile) of the Convention shall be replaced by the following:

"c) by reason of the provisions of paragraph 1 domiciled in the other Contracting State for not more than ten years,".

ARTICLE 2

The following sentence shall be added to the end of paragraph 4 of Article 10 (Deductions and Exemptions) of the Convention:

"The provisions of this paragraph shall not apply to a citizen of the United States of America domiciled in the Federal Republic of Germany or a former citizen or long-term resident of the United States of America

referred to in subparagraph a) of paragraph 1 of Article 11."

ARTICLE 3

New paragraphs 5 and 6 shall be added to Article 10

(Deductions and Exemptions) of the Convention as follows:

"5. In determining the estate tax imposed by the United States of America, the estate of a decedent (other than a citizen of the United States of America) who was domiciled in the Federal Republic of Germany at the time of the decedent's death shall be allowed a unified credit equal to the greater of:

a) The amount that bears the same ratio to the credit allowed to the estate of a citizen of the United States of America under the law of the United States of America as the value of the part of the decedent's gross estate that at the time of the decedent's death is situated in the United States of America bears to the value of the decedent's entire gross estate wherever situated;
or

b) The unified credit allowed to the estate of a nonresident not a citizen of the United States of America under the law of the United States of America.

The amount of any unified credit otherwise allowable under this paragraph shall be reduced by the amount of any credit previously allowed with respect to any gift made by the decedent. For purposes of subparagraph a), the part of the decedent's gross estate that is situated in the United States of America shall not exceed the part of the decedent's gross estate that may be taxed by the United States of America in accordance with this Convention. A credit otherwise allowable under subparagraph a) shall be allowed only if all information necessary for the verification and computation of the credit is provided.

6. In determining the estate tax imposed by the United States of America, the value of the decedent's taxable estate shall be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property that passes to the decedent's surviving spouse (within the meaning of the law of the United States of America) and that would qualify for the estate tax marital deduction under the law of the United States of America if the surviving spouse were a citizen of the United States of America and all applicable elections were properly made (hereinafter referred to as "qualifying property"). The

decedent's estate shall be entitled to such marital deduction provided that:

a) At the time of the decedent's death, the decedent was domiciled in either the Federal Republic of Germany or the United States of America;

b) The decedent's surviving spouse was at the time of the decedent's death domiciled in either the Federal Republic of Germany or the United States of America;

c) If both the decedent and the decedent's surviving spouse were domiciled in the United States of America at the time of the decedent's death, one or both was a citizen of the Federal Republic of Germany; and

d) The executor of the decedent's estate elects the benefits of this paragraph and irrevocably waives the benefits of any other estate tax marital deduction that would be allowed under the law of the United States of America on a United States estate tax return filed for the decedent's estate by the date on which a qualified

domestic trust election could be made under the law of the United States of America.

The marital deduction allowed under this paragraph shall be equal to the lesser of the value of the qualifying property or the applicable exclusion amount (within the meaning of the law of the United States of America, determined without regard to any gift previously made by the decedent)."

ARTICLE 4

Paragraph 1 of Article 11 (Credits) of the Convention shall be replaced by the following:

"1. The provisions of this Convention shall not preclude

a) the United States of America from taxing in accordance with its law the estate of a decedent or the gift of a donor who, at his death or at the making of the gift, was:

i) a citizen of the United States of America,

ii) domiciled (within the meaning of Article 4) in the United States of America,

or

iii) a former citizen or long-term resident whose loss of such status had as one of its principal purposes the avoidance of tax (as defined under the laws of the United States of America), but only for a period of ten years following such loss;

b) the Federal Republic of Germany from taxing in accordance with its law an heir, a donee, or another beneficiary who was domiciled (within the meaning of Article 4) in the Federal Republic of Germany at the time of the death of the decedent or the making of the gift.

The preceding sentence shall not, however, apply to paragraphs 2, 3, and 4 of Article 10, paragraphs 2, 3, 4 and 5 of this Article, and Article 13; or paragraphs 5 or 6 of Article 10 as applied to the estates of persons other than former citizens and long-term residents referred to in the preceding sentence."

ARTICLE 5

1. This Protocol shall be subject to ratification in accordance with the applicable procedures in the United States of America and the Federal Republic of Germany and instruments of ratification shall be exchanged as soon as possible.

2. This Protocol shall enter into force upon the exchange of instruments of ratification and shall have effect with respect to deaths occurring after that date.

3. Notwithstanding the foregoing provisions of paragraph 2 of this Article, Articles 3 and 4 of this Protocol shall, notwithstanding any limitation imposed under the law of a Contracting State on the assessment, reassessment or refund with respect to a person's or estate's return, have effect with respect to deaths occurring after November 10, 1988, provided that any return or claim for refund asserting the benefits of this Protocol shall be filed within one year of the date on which this Protocol enters into force or within the otherwise applicable period for filing such claims under domestic law.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Protocol.

DONE at Washington, in duplicate, this 14th day of
December, 1998, in the English and German languages, both
texts being equally authentic.

FOR THE UNITED STATES
OF AMERICA:

FOR THE FEDERAL REPUBLIC
OF GERMANY: